PHILIPPINE REPORTS

VOL. 591

OCTOBER 24, 2008 TO NOVEMBER 14, 2008

VOLUME 591

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

OCTOBER 24, 2008 TO NOVEMBER 14, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 7505. October 24, 2008]

WALTER WILKIE, *complainant, vs.* **ATTY. SINAMAR E. LIMOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ISSUANCE OF A WORTHLESS CHECK INDICATES A LAWYER'S UNFITNESS FOR THE TRUST AND CONFIDENCE REPOSED ON HER. — At any rate, the excuses given by respondent cannot exculpate her from an administrative sanction considering her acknowledgement that worthless checks were issued by her in payment of the loan. We have held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on her. It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. It also manifests a lawyer's low regard to her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image of the profession she should hold in high esteem.

2. REMEDIAL LAW; RULES OF COURT; DISBARMENT AND DISCIPLINE OF ATTORNEYS; PROCEEDINGS IN THE

INTEGRATED BAR OF THE PHILIPPINES; SERVICE OR DISMISSAL; DISCIPLINE OF LAWYERS CANNOT BE CUT SHORT BY A COMPROMISE OR WITHDRAWAL OF CHARGES. — Section 5, Rule 139-B of the Rules of Court provides in part: Sec. 5. Service or dismissal. — . . . No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same. Pertinently in *Rangwani v. Dino,* citing *Bolivar v. Simbol,* the Court ruled that the discipline of lawyers cannot be cut short by a compromise or withdrawal of charges. We ratiocinated, thus: It is contended on the part of the plaintiff in error that this settlement operated as an absolution and remission of his offense. This view of the case ignores the fact that the exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession. He had acted in clear disregard of his duty as an attorney at the bar, and without "good fidelity" to his client. The public had rights which Mrs. Curtis could not thus settle or destroy. The unworthy act had been fully consummated.

3. **ID.; ID.; ATTORNEYS AND ADMISSION TO BAR; DISBARMENT OR SUSPENSION OF ATTORNEYS BY SUPREME COURT; GROUNDS THEREFOR; DISBARMENT IS METED OUT ONLY IN CLEAR CASES OF MISCONDUCT THAT SERIOUSLY AFFECT THE STANDING AND CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT. —** Under Sec. 27, Rule 138 of the Rules of Court, 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 rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers,

where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end.

4. LEGAL ETHICS; ATTORNEYS; MEMBERSHIP IN THE LEGAL PROFESSION IS A PRIVILEGE DEMANDING A HIGH DEGREE OF GOOD MORAL CHARACTER, NOT ONLY AS A CONDITION PRECEDENT TO ADMISSION, BUT ALSO AS A CONTINUING REQUIREMENT FOR THE PRACTICE OF LAW. — On a final note, we reiterate that membership in the legal profession is a privilege demanding a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law. Sadly, herein respondent fell short of the exacting standards expected of her as a vanguard of the legal profession.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case arose from a Complaint dated April 27, 2005[1] initially filed with the Integrated Bar of the Philippines (IBP), La Union Chapter, and forwarded to the IBP, National Office in Pasig City, by Mr. Walter Wilkie against Atty. Sinamar E. Limos. In the complaint, it was alleged that the respondent committed deceitful and dishonest conduct when she obtained a loan from the complainant and issued two (2) postdated checks in the latter's favor to pay the said loan despite knowledge of insufficiency of funds to cover the same.

The material averments of the Complaint are summarized by the IBP, Commission on Bar Discipline (CBD) in this wise:

Complainant alleged that on 2 April 2003, he engaged the services of respondent regarding his intention of adopting his wife's nephew, Reynal Alsaen Taltalen. Complainant has given his full trust and confidence on respondent. Notwithstanding their lawyer and client relationship, on March 30, 2003, respondent borrowed money from

[1] *Rollo,* pp. 3-8*;* docketed as CBD Case No. 05-1534.

complainant in the amount of ₱250,000.00. The loan agreement was evidenced by a Contract of Loan with a stipulation of interest in the amount of 24% per annum and that respondent will issue two (2) post dated checks representing the principal amount of ₱250,000.00 and the interest in the amount of ₱60,000.00.

When the checks became due, complainant deposited the same to his account at Equitable PCI Bank but to his surprise and dismay, the checks were returned as they were drawn against insufficient funds. Despite demands made, respondent failed to pay her obligation.

Complainant decided to engage the services of a counsel who also made a formal demand to respondent but to no avail. Criminal complaints were filed against respondent before Branch 2, Municipal Trial Court of San Fernando City, La Union.

Complainant has also withdrawn the adoption case from respondent who did not do anything regarding the case despite the lapse of almost a year.[2]

In its Order[3] dated July 21, 2005, the CBD gave respondent a period of fifteen (15) days to submit her Answer to the Complaint. Through Investigating Commissioner Rebecca Villanueva-Maala, the CBD also sent a Notice of Mandatory Conference/Hearing[4] dated February 8, 2006 to the parties which required them to appear before the Commission on March 29, 2006.[5]

In response to the aforementioned Notice, a Manifestation and Motion[6] dated February 23, 2006 was filed by the respondent, requesting that she be furnished a copy of the complaint and be given a reasonable time after receipt of the complaint to submit a responsive pleading thereto. Respondent also moved for the cancellation and re-scheduling at a later date of the mandatory conference/hearing.

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

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

[4] *Id.*, p. 17; mistakenly dated 2005 in the Order.

[5] *Id.; id.*

[6] *Id.*, pp. 18-19.

In her Order [7] dated March 1, 2006, Commissioner Villanueva-Maala rejected respondent's claim that she did not receive the complaint in view of the registry return receipt attached to the records showing that a certain JE Limos received the Order dated July 21, 2005. However, in the interest of justice, respondent was given a non-extendible period of ten (10) days to file an Answer but the mandatory conference/hearing set on March 29, 2006 was maintained.

At the scheduled March 29, 2006 mandatory conference/hearing, the complainant was present but the respondent failed to appear. Furthermore, respondent failed to file an answer. Thus, the Commissioner considered respondent in default and deemed the case submitted for report and recommendation in her Order[8] dated March 29, 2006.

Eventually, the Investigating Commissioner's Report and Recommendation,[9] dated July 28, 2006, was submitted to the IBP Board of Governors with the following conclusion and recommendation:

> A lawyer who issued bouncing checks violates the law and is subject to disbarment or suspension. Violation of B.P. 22 is considered a crime involving moral turpitude as this mischief creates not only a wrong to the payee or holder, but also an injury to the public. Although it does not relate to the exercise of the profession of a lawyer, however, it certainly relates to and affects the good moral character of a person. The Court has stressed that the nature of the office of an attorney at law requires that she shall be a person of good moral character. This qualification is not only a condition precedent to the practice of law; its continued possession is also essential for remaining in the practice of law.
>
> WHEREFORE, premises considered, we hereby recommend that respondent ATTY. SINAMAR E. LIMOS be suspended for a period of TWO (2) YEARS from receipt hereof from the practice of her profession and as a member of the Bar.
>
> RESPECTFULLY SUBMITTED.

---

[7] *Id.*, p. 21; mistakenly dated as 2005 in the Order.

[8] *Id.*, p. 23; *id.*

[9] *Id.*, pp. 26-28.

On December 15, 2006, the Board of Governors of the IBP passed Resolution No. XVII-2006-591[10] in CBD Case No. 05-1534 adopting and approving, with modification, the afore-quoted report and recommendation of the commissioner, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for respondent's deceitful and dishonest conduct, Atty. Sinamar E. Limos is hereby **REPRIMANDED** with **STERN WARNING** that a repetition of similar conduct will be dealt with more severely.

On March 21, 2007, the CBD transmitted the Notice of Resolution pertaining to Resolution No. XVII-2006-591 together with the records of CBD Case No. 05-1534, [11] which this Court noted in its Resolution[12] dated June 27, 2007.

On October 16, 2007, the additional records of the case were transmitted to the Court by the IBP Commission on Bar Discipline, through the Office of the Bar Confidant. Notably, the transmittal included the letter[13] dated December 11, 2006 of the respondent explaining her failure to attend the hearing of CBD Case No. 05-1534 and pleading for the consideration of the members of the IBP Board of Governors. According to respondent, she was not able to attend the mandatory conference/hearing because she was physically unfit at that time. Her office staff whom she relied upon to receive communications for the office went on leave without her knowledge and she was made to believe that the administrative complaint would be withdrawn in view of the Affidavit of Desistance[14] dated August 24, 2005 executed

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[10] *Id.*, p. 25.

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

[12] *Id.*, p. 29.

[13] *Id.*, pp. 31-32.

[14] *Id.*, p. 33.

by complainant. Respondent claimed that her loan from complainant was actually an accommodation she extended in behalf of a client, Hilario Inocencio. She issued the postdated checks on the belief that Inocencio will send her the funds to cover the said checks pursuant to their agreement. To this day, however, Inocencio had not complied with his promise in spite of the loan having been fully paid by respondent on August 21, 2005 to the complainant who had filed cases against her for violation of Batas Pambansa Blg. 22 (BP 22). Inocencio's demise had left her without any recourse. To support her allegations, respondent attached to her letter the Affidavit of Desistance and the Order[15] of the MTC, San Fernando, La Union, dated August 31, 2005 dismissing the criminal cases for violation of BP 22 against her (respondent).

We find the records sufficient to support the IBP's findings.

In *Barrientos v. Libiran-Meteoro*,[16] we held that:

x x x [the] deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflect the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Canon 1 and Rule 1.01 of which explicitly states:

CANON 1— A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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[15] *Id.*, p. 37.

[16] Adm. Case No. 6408, August 31, 2004, 437 SCRA 209, 216.

Respondent did not deny that she obtained a loan in the amount of ₱250,000.00 with interest from the complainant. Respondent's bare claim that the loan was, in fact, only an accommodation for a former client who according to respondent had already died cannot be given credence and, indeed, too specious to be believed. Besides, she did not file any answer to the complaint nor even appeared personally before the CBD despite being duly notified, to allege such claim. Added to this observation is the fact that in her Manifestation and Motion dated February 23, 2006, no mention was made with regard to the complainant's August 24, 2005 Affidavit of Desistance. It was only mentioned in her letter to the IBP dated December 14, 2006 which was received in the IBP-CBD on January 3, 2007. By then, the Report and Recommendation dated July 28, 2006 of the Commissioner was already submitted to the Board of Governors which resolved to affirm said Report in its Resolution dated December 15, 2006.

At any rate, the excuses given by respondent cannot exculpate her from an administrative sanction considering her acknowledgement that worthless checks were issued by her in payment of the loan.

We have held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on her.[17] It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order.[18] It also manifests a lawyer's low regard to her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image of the profession she should hold in high esteem.[19]

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[17] *Id.*, p. 218.

[18] *Id*.

[19] *Id*.

Respondent, however, to secure her exoneration from the consequence of her act in issuing worthless checks, heavily relies on the complainant's Affidavit of Desistance dated August 24, 2005. But such reliance is misplaced because while the complainant filed his affidavit with the trial court, he did not do the same thing in this case. Notably, at the time of the mandatory conference/hearing before the CBD on March 29, 2006, complainant did not even inform the Commissioner that he already desisted in prosecuting the criminal cases he filed with the MTC against the respondent and that such desistance resulted in the dismissal of said cases. In any event, the Court has consistently frowned upon the desistance of complainants because of legal and jurisprudential injunction.

Section 5, Rule 139-B of the Rules of Court provides in part:

Sec. 5. Service or dismissal. — . . .

x x x x x x x x x

No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

Pertinently in *Rangwani v. Dino*,[20] citing *Bolivar v. Simbol*,[21] the Court ruled that the discipline of lawyers cannot be cut short by a compromise or withdrawal of charges. We ratiocinated, thus:

It is contended on the part of the plaintiff in error that this settlement operated as an absolution and remission of his offense. This view of the case ignores the fact that the exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession. He had acted in clear disregard of his duty as an attorney at the bar, and without "good fidelity" to his client. The public had rights which Mrs. Curtis could not thus settle or destroy. The unworthy act had been fully consummated.[22]

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[20] A.C. No. 5454, November 23, 2004, 443 SCRA 408.

[21] A.C. No. 377, April 29, 1966, 16 SCRA 623.

[22] *Supra* at note 20, p. 417.

Accordingly, an administrative sanction on the respondent is warranted. We disagree, however, with the recommended sanction of reprimand by the IBP Board of Governors for being not commensurate to the gravity of the wrong committed by respondent.

Under Sec. 27, Rule 138 of the Rules of Court, 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 rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court.[23] While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end.[24]

In *Barrios v. Martinez*,[25] we disbarred the respondent who issued worthless checks for which he was convicted in the criminal case filed against him.

In *Lao v. Medel*,[26] we held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law. The same sanction was imposed on the respondent-lawyer in *Rangwani v. Dino*[27]

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[23] *Id.*, p. 420.

[24] *Id*.

[25] A.C. No. 4585, November 12, 2004, 442 SCRA 324.

[26] A.C. No. 5916, July 1, 2003, 405 SCRA 227, 228.

[27] *Supra* at note 20.

having been found guilty of gross misconduct for issuing bad checks in payment of a piece of property the title of which was only entrusted to him by the complainant.

But in *Barrientos v. Libiran-Meteoro*,[28] we meted out only a six-month suspension to Atty. Elerizza Libiran-Meteoro for having issued several checks to the complainants in payment of a pre-existing debt without sufficient funds, justifying the imposition of a lighter penalty on the ground of the respondent's payment of a portion of her debt to the complainant, unlike in the aforementioned *Lao* and *Rangwani* cases where there was no showing of any restitution on the part of the respondents.

In this case, the respondent has fully paid her obligation to the complainant which according to the receipts dated July 21, 2005 and August 24, 2005,[29] amounted to ₱400,000.00. The criminal cases filed by the complainant have been dismissed and this is the first time a complaint of such nature has been filed against the respondent. Under these circumstances, the Court rules and so holds that a suspension of three months from the practice of law would be sufficient sanction on the respondent.

On a final note, we reiterate that membership in the legal profession is a privilege demanding a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law.[30] Sadly, herein respondent fell short of the exacting standards expected of her as a vanguard of the legal profession.

WHEREFORE, respondent Atty. Sinamar E. Limos is *SUSPENDED FOR THREE MONTHS* from the practice of law with warning that repetition of the same or similar acts will merit a more severe penalty. Let a copy of this Decision be entered in the respondent's record as a member of the Bar, and notice of the same be served on the Integrated Bar of the Philippines,

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[28] *Supra* at note 16.

[29] *Rollo*, pp. 35 & 36.

[30] *Supra* at note 16, p. 219.

and on the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio,[*] *Corona, Azcuna,* and *Brion,*[**] *JJ.,* concur.

Puno, C.J., on official leave.

SECOND DIVISION

[A.M. No. MTJ-08-1721. October 24, 2008]
(Formerly A.M. No. IPI-03-1464-MTJ)

MICHAEL GAMALIEL PLATA, *complainant, vs.* **JUDGE LIZABETH G. TORRES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; PROPER DISPOSITION OF CASES. — The Court agrees with the findings of OCA Consultant Quimbo. As a general principle, rules prescribing the time within which certain acts must be done or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of official business. By their very nature, these rules are regarded as mandatory. The 1987 Constitution requires trial judges to dispose of the court's business promptly and to decide cases and matters within three (3) months from the filing of the last pleading, brief or memorandum. In the disposition of cases, members of the bench have always been exhorted to strictly

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[*] Acting Chairperson of the First Division as per Special Order No. 527.

[**] Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 528.

adhere to this rule to prevent delay, a major culprit in the erosion of public faith and confidence in our justice system.

2. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL ETHICS; JUDGES ARE DIRECTED TO DISPOSE OF CASES PROMPTLY. — The speedy disposition of cases by judges is in fact unequivocally directed by Canon 6 of the Code of Judicial Ethics: "He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied."

3. REMEDIAL LAW; RULES OF COURT; JUDGES; UNDUE DELAY IN RENDERING A DECISION; PENALTY. — Under Rule 140, Section 9 of the Rules of Court, undue delay in rendering a decision is considered a less serious charge punishable by either suspension from office without salary for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THE RESOLUTION OF THE COURT REQUIRING COMMENT ON AN ADMINISTRATIVE COMPLAINT AGAINST OFFICIALS AND EMPLOYEES OF THE JUDICIARY IS NOT A MERE REQUEST FROM THE COURT BUT A DIRECTIVE THAT SHOULD BE COMPLIED WITH PROMPTLY AND COMPLETELY; CASE AT BAR. — The respondent Judge's liability for repeatedly disregarding the orders of this Court is, however, another matter. She showed disrespect, if not actual contempt of this Court, by her extended indifference to the resolutions requiring her to comment on the accusations against her. A resolution of this Court requiring that specific acts be done or undertaken with respect to the performance of judicial duties, is not a mere request but a directive that should be complied with promptly and completely. It took the respondent Judge the whole of one year (from November 2005 to November 2006) to respond to our "show cause" order. This kind of resistance to our orders betrays not only a recalcitrant streak in character, but also a direct disrespect and indifference to this Court that we cannot tolerate. In *Martinez v. Zoleta*, we held: The resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially,

inadequately, or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents and to resolutions requiring comment on such administrative complaints.

5. ID.; ID.; ID.; GROSS MISCONDUCT AND INSUBORDINATION; FAILURE TO COMPLY WITH THE COURT'S DIRECTIVES CONSTITUTES GROSS MISCONDUCT AND INSUBORDINATION. — The respondent Judge's extended and repeated failure to comply with the Court's directives constitutes gross misconduct and insubordination. The last person to refuse to adhere to the directives of the Court, or, in its stead, the Office of the Court Administrator, is the judge himself. No position is more demanding as regards moral righteousness and uprightness of any individual than a judge on the bench. The respondent Judge miserably failed to live up to this expectation.

D E C I S I O N

BRION, *J.*:

In a sworn letter dated April 21, 2003 addressed to then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., Michael Gamaliel J. Plata (*complainant*) charged Judge Lizabeth G. Torres (*respondent Judge*) of the Metropolitan Trial Court in Cities (*MeTC*), Branch 60, Mandaluyong City, with grave abuse of discretion, gross negligence, serious inefficiency and violation of the Code of Judicial Conduct for her failure/refusal to resolve the Motion to Withdraw Information dated July 29, 1999, filed by Assistant City Prosecutor Susante J. Tobias of Mandaluyong City, in Criminal Case No. 6679 entitled "*People of the Philippines v. Michael J. Plata.*"

The complainant reiterated his charges against the respondent Judge in a verified letter-complaint dated August 14, 2003.

The recitals in both the letter and the complaint-affidavit show that the complainant was accused of attempted homicide

before the City Prosecutor's Office of Mandaluyong City, docketed at I.S. No. 97-10732. The City Prosecutor's Office found probable cause to charge the complainant of the imputed crime in a Resolution dated November 21, 1997. Consequently, an Information for Attempted Homicide was filed against him with the MeTC of Mandaluyong City. The case was subsequently raffled to the sala of the respondent Judge.

The complainant appealed the City Prosecutor's resolution to the Department of Justice (*DOJ*). In Resolution No. 305, Series of 1998, the DOJ reversed the appealed resolution and directed it to cause, with leave of court, the withdrawal of the information for attempted homicide. Secretary of Justice Serafin R. Cuevas denied the motions for the reconsideration of DOJ Resolution No. 305.

In accordance with the DOJ directive, Prosecutor Tobias filed a Motion to Withdraw Information with the respondent Judge's court on July 29, 1999. Two (2) years after, the respondent Judge had not acted on the motion, prompting the complainant to file on August 28, 2001 a manifestation for its early resolution. The respondent Judge set the motion for hearing on December 13, 2001. Instead of proceeding with the hearing, the respondent Judge required the private complainants to file a manifestation within five days supporting their claim that DOJ Resolution No. 305 had been appealed to the Court of Appeals; otherwise the motion shall be deemed submitted for resolution. No action came from the respondent Judge despite the lapse of the five-day period; this inaction lasted up to the filing of the present administrative complaint.

The complainant claims that the respondent Judge's failure to act on the motion to withdraw the information is a violation of his constitutional right to a speedy disposition of the case against him. He alleges that "[L]ike the sword of Dasmocles, the instant case has hounded me in the exercise of my lawful rights, in the performance of my tasks, and in my need to clear my name and reputation."

On August 26, 2003, we required the respondent Judge to comment on the administrative complaint. The respondent Judge

failed to comply despite the several extensions and a warning we gave.

Finally, we required the respondent Judge in a Resolution dated November 21, 2005 to show cause why she should not be administratively dealt with for having repeatedly failed to comment on the complaint despite directives from the Court. We likewise required her to submit the required comment within five (5) days from notice. The respondent Judge disregarded our "show cause" order and likewise failed to file the required comment, prompting us to impose a ₱1,000.00 fine against her. She only filed her "show cause" explanation and comment on November 3, 2006, or more than three (3) years after she was first required to comment.

The Court designated Consultant Romulo S. Quimbo of the Office of the Court Administrator (*OCA*) to investigate the administrative complaint and to submit a report and recommendation on the case. On March 31, 2007, he reported as follows:

x x x x x x x x x

In her "Consolidated Order," respondent admits that in Criminal Case No. 66879 against the present complaint, a motion to withdraw the information was filed by the public prosecutor on July 30, 1999. Respondent is not necessarily responsible for the court's inaction on the matter before June 1, 2001 when she assumed the position of presiding judge of Branch 60, Metropolitan Trial Court of Mandaluyong City. But after her assumption, it was her responsibility to resolve the pending incident within the period allowed by law.

It appears from the same "Consolidated Order" that Criminal Case No. 66879 was dismissed on September 15, 2006. If we consider the fact that complainant filed, on August 1, 2001, a manifestation praying that the motion to withdraw information against him be given due course, it was quite a long time before respondent resolved the motion as she issued her "Consolidated Order" only on September 15, 2006 or more than five years after.

The excuse given by respondent is that she wanted to have all the cases disposed of at one time. This motive is laudable if by doing so the judge does not go beyond the periods provided by law for the resolution of pending incidents.

The failure of respondent to promptly resolve the motion filed by the public prosecutors to withdraw the information, damaged the complainant. The latter had to keep his bail bond active during all these years that the motion was held in abeyance. If he was paying a yearly premium, to that extent he suffered damages. Instead of being relieved of the anxiety of having a criminal case pending against him, complainant suffered the same for the period that respondent failed to resolved the incident.

Finding the respondent Judge liable, OCA Consultant Quimbo made the following recommendations:

Considering that because of her obstinate refusal/failure to submit the comment required of her despite several extensions granted her, the Court had to impose a fine on her, it is recommended that in the present case, respondent be fined in the amount of fifteen (15) thousand pesos and warned that a repetition of the same offense will be dealt with more severely by the Court.

The Court agrees with the findings of OCA Consultant Quimbo. As a general principle, rules prescribing the time within which certain acts must be done or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of official business. By their very nature, these rules are regarded as mandatory.[1] The 1987 Constitution requires trial judges to dispose of the court's business promptly and to decide cases and matters within three (3) months from the filing of the last pleading, brief or memorandum. In the disposition of cases, members of the bench have always been exhorted to strictly adhere to this rule to prevent delay, a major culprit in the erosion of public faith and confidence in our justice system. The speedy disposition of cases by judges is in fact unequivocally directed by Canon 6 of the Code of Judicial Ethics: "He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied."[2]

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[1] *Balajedeong v. del Rosario,* A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13.

[2] *Office of the Court Administrator v. Español,* A.M. No. RTJ-04-1872, October 18, 2004, 440 SCRA 332.

In the present case, it took respondent Judge more than five (5) years before she resolved a simple motion to withdraw the information against the complainant. This is indicative of the gross inefficiency that undermines the people's faith in the judiciary and reinforces in the mind of the litigants the impression that the wheels of justice grind exceedingly slow. We cannot allow this to happen, particularly at a time when the clogging of the court dockets is one of the main complaints against the judiciary.

The respondent Judge attributes her delay in resolving the subject motion on "overwhelming workload, aggravated by lack of court personnel and marital problems." She claims that when she assumed her position as Judge of the MeTC, Branch 60, Mandaluyong City, she inherited more than 10,000 cases with 2,645 new cases filed with her court; she had to work beyond office hours and even on Saturdays in order to cope. In addition to the heavy workload in her own branch, she had to attend to the more than 7,000 cases in Branch 59 where she was designated as pairing Judge. She was also designated as Executive Judge from November 2002 to May 2006. Thus, she was deciding cases as many as 299 per month on the average, and a low of 58 cases a month on the average as reflected in her monthly reports. The lack of court personnel and her personal problems as a single parent aggravated her professional woes.

While the respondent Judge's justifications for the delay in her sala are not without merit, the circumstances she cited are not sufficient to exonerate her from liability. As we have repeatedly stressed, if it becomes unavoidable for a judge to render a decision or resolve a matter beyond the reglementary period, he or she may always seek additional time by simply filing a request for extension with us, citing the good reasons for the request.[3] The Court, cognizant of the heavy caseload of some judges and mindful of the difficulties they encounter in the discharge of

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[3] *Office of the Court Administrator v. Barroso, Jr. (ret.), et al.,* A.M. No. RTJ-04-1874, October 18, 2004, 440 SCRA 334.

their adjudicatory duties, has always been liberal in recognizing meritorious grounds and in granting these requests.[4]

Under Rule 140, Section 9 of the Rules of Court, undue delay in rendering a decision is considered a less serious charge punishable by either suspension from office without salary for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Considering that the circumstances the respondent Judge cited are meritorious and are sufficient to mitigate her liability, we see no need to impose on respondent Judge the maximum penalty the Rule decrees. The fine of ₱15,000.00 that OCA Consultant Quimbo recommended is likewise high and would render meaningless the mitigating circumstances we recognized. To be fair to the respondent Judge, we must limit the fine to ₱10,000.00.

The respondent Judge's liability for repeatedly disregarding the orders of this Court is, however, another matter. She showed disrespect, if not actual contempt of this Court, by her extended indifference to the resolutions requiring her to comment on the accusations against her. A resolution of this Court requiring that specific acts be done or undertaken with respect to the performance of judicial duties, is not a mere request but a directive that should be complied with promptly and completely. It took the respondent Judge the whole of one year (from November 2005 to November 2006) to respond to our "show cause" order. This kind of resistance to our orders betrays not only a recalcitrant streak in character, but also a direct disrespect and indifference to this Court that we cannot tolerate.[5] In *Martinez v. Zoleta*,[6] we held:

> The resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court.

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[4] *Balajedeong v. del Rosario, supra* note 1.

[5] *Imbang v. del Rosario,* A.M. No. 03-1515-MTJ, November 19, 2004, 443 SCRA 79.

[6] A.M. No. MTJ-94-904, 315 SCRA 438.

Nor should it be complied with partially, inadequately, or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents and to resolutions requiring comment on such administrative complaints.

The respondent Judge's extended and repeated failure to comply with the Court's directives constitutes gross misconduct and insubordination.[7] The last person to refuse to adhere to the directives of the Court, or, in its stead, the Office of the Court Administrator, is the judge himself. No position is more demanding as regards moral righteousness and uprightness of any individual than a judge on the bench.[8] The respondent Judge miserably failed to live up to this expectation.

For her gross misconduct and insubordination, we impose on the respondent Judge a fine of ten thousand pesos (₱10,000.00).

WHEREFORE, we hereby impose on respondent Judge Lizabeth G. Torres of the MeTC, Branch 60, Mandaluyong City, the penalty of fine of ₱10,000.00 for undue delay in resolving the Motion to Withdraw Information in Criminal Case No. 6679, and another fine of ₱10,000.00 for her repeated failure to comply with the Court's directives to file her comment on the administrative complaint against her. We *WARN* that any repetition of these or similar offenses in the future shall be dealt with more severely.

SO ORDERED.

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

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[7] *Imbang v. del Rosario, supra* note 5.

[8] *Id.*

EN BANC

[A.M. No. P-05-1998. October 24, 2008]
(Formerly OCA IPI No. 04-1879-P)

MAYOR NICASIO M. RAMOS, *complainant, vs.* **CYRIL T. MAYOR, Clerk III, Metropolitan Trial Court, Branch 13, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ACT OF MAKING UNTRUTHFUL DECLARATIONS IN ONE'S PERSONAL DATA SHEET CONSTITUTES FALSIFICATION OF PUBLIC DOCUMENTS AND DISHONESTY WHICH ARE GRAVE OFFENSES; PENALTY. — Under Section 52 (A)(1) and (A)(6), Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service" (Resolution No. 99-1936 dated August 31, 1999), respondent's act of making untruthful declarations in his PDS renders him administratively liable for falsification of public document and dishonesty which are classified as grave offenses and, thus, warrant the corresponding penalty of dismissal from the service even if either of them is respondent's first offense. Section 58 of Rule IV thereof states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision. The importance of accomplishing a PDS with utmost honesty cannot be stressed enough. The accomplishment of a PDS is a requirement under Civil Service Rules and Regulations in connection with employment in the government. The making of untruthful statements therein is, therefore, connected with such employment. As such, making a false statement therein amounts to dishonesty and falsification of an official document. Dishonesty and falsification are considered grave offenses. The Court has not hesitated to impose the extreme penalty of dismissal from the service on employees found guilty of such offenses.

2. ID.; ID.; ID.; ID.; ONE WHO INVOKES GOOD FAITH MUST SHOW HONESTY OF INTENTION, FREE FROM KNOWLEDGE OF CIRCUMSTANCES WHICH OUGHT TO PUT ONE UPON INQUIRY; CASE AT BAR. — One who invokes good faith must show honesty of intention, free from knowledge of circumstances which ought to put one upon inquiry. Respondent falsified an official document to gain unwarranted advantage over other more qualified applicants to the same position. He cannot be said, therefore, to have measured up to the standards required of a public servant. The Court cannot take on its face value respondent's blanket claim of good faith and inadvertence to justify his mental dishonesty and false declarations in the three entries of his PDS. Respondent cannot feign ignorance of the falsities he has declared as he is the Editor-in-Chief of the newspaper "Romblon Today" and cannot be said to be someone who lacks schooling or has a difficulty in comprehending its plain import. Per his PDS, respondent had his college from 1982-1986 at the University of the East and graduated with the degree of Bachelor of Arts (AB), Major in Political Science. He took up Law at the same university for one year, stating "up to First Year, Second Semester" without indicating the specific year. It cannot be said that respondent did not fully understand the details he filled out in the PDS. In Item No. 31, it states "I declare that the answers given above are true and correct" which means that a government employee who will affix one's signature therein declares that all the information supplied in the PDS are true and correct to the best of the declarant's personal knowledge. All things being equal, another employee who possesses similar qualifications should have been appointed had it not been for the misrepresentations of respondent.

D E C I S I O N

***PER CURIAM*:**

Complainant Nicasio M. Ramos, Municipal Mayor, Cajidiocan, Romblon, filed an administrative complaint against respondent Cyril T. Mayor, Clerk III, Metropolitan Trial Court, Branch 13, Manila, charging him with "Gross Misrepresentation, Dishonesty and Falsification of Public Document" relative to certain

misdeclarations in his accomplished Personal Data Sheet (PDS), dated February 19, 2003, as submitted to the Office of the Court Administrator (OCA) and the Civil Service Commission.

In his Amended Complaint dated December 22, 2003 and filed on February 18, 2004,[1] complainant alleged that respondent willfully, deliberately, and unlawfully submitted his PDS dated February 19, 2003, which is a public record, with the following false entries and, thus, rendered himself unfit for appointment to his present position, to wit:

(1) In answer to Question No. 25, respondent placed two (2) check marks corresponding to "NO" and wrote "N/A" (meaning, not applicable) on the space provided to the queries, "Do you have any pending a) administrative case? b) criminal case? If you have any, give details of the offense." Complainant asserted that respondent failed to state that he was one of the four (4) accused in Criminal Case No. 00-1523, entitled "*People of the Philippines v. Gilbert R. Minano, Cyril T. Mayor, Marvin Arboleda, and Manuel R. Recto*" for libel, filed with the Regional Trial Court, Branch 82, Odiongan, Romblon by Prosecutor Petroni F. Fradejas on September 5, 2002;

(2) In answer to Question No. 28, respondent placed a check mark corresponding to "NO" and wrote "N/A" (meaning, not applicable) on the space provided to the query, "Have you ever been retired, forced to resign or dropped from employment in the public and private sectors?" Complainant pointed out that respondent was one of those who joined the mass protest/strike against the management of Light Railway Transit Authority (LRTA) and, by reason thereof, his employment was terminated; and

(3) In answer to Question No. 29, respondent placed a check mark corresponding to "NO" to the query, "Have you ever been a candidate in a national or local election (except *barangay* election)? If 'YES,' give date of election and other particulars." Complainant insisted that respondent did not declare that he ran for the position of Sangguniang Bayan member in Cajidiocan, Romblon during the May 2001 local elections but lost.

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

In his Comment dated May 7, 2004,[2] respondent invoked good faith and denied any dishonesty on his part:

I respectfully submit that my answers in the Personal Data Sheet adverted to are not willful, deliberate and unlawful nor dishonest. If at all, the answers are based on wrong perception or lack of attention borne of complacency but not of intention to be dishonest.

With respect to the criminal case for libel, I was under the impression that since the prosecution's resolution is on appeal with the Department of Justice, the case is not yet in court and, therefore, it cannot be said that there is a pending criminal case in court against me because the finding of probable cause by the fiscal may yet be reversed and the case will not reach the court. It is only now that I have verified that with the filing of the information and the issuance of the warrant of arrest, the court has acquired jurisdiction over the case and, therefore, there is now a pending criminal case against me.

As regards Question No. 28, I understand from my companions at LRTA that our case for reinstatement is pending on appeal and, therefore, my employment status with said agency is still hanging in the balance. I did not retire, not being of retirement age, I did not resign or abandon my employment, and granting without conceding that I was dropped from employment, the matter is still to be resolved in the various cases filed with the National Labor Relations [Commission] by separate groups of LRTA employees. This is probably the reason that I answered No to the question.

As regards the question of whether I had been a candidate in an election, I do not quite remember why I answered No. It is possible that I was inattentive to the import of the question. The fact is it did not enter my mind that an erroneous answer may adversely affect [my] application. [I] was complacent but certainly not intentionally dishonest because what was foremost in my mind was that I have the qualifications for the job and would get it on such basis x x x.

I categorically declare that the erroneous answers, granting that they are, are not dictated by a deliberate intention to lie and be dishonest. They are innocuous in the main and do not refer to my qualifications for the position which is possibly why I was complacent and inattentive and if this Honorable Court deigns to punish me for the lapse, I beg this Honorable Court to temper the punishment with

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[2] *Id*., pp. 34-35.

Christian compassion and not to mete the supreme penalty of dismissal because this would also make my family suffer for errors which they had no participation.

The OCA found that the erroneous entries made by respondent in his PDS constituted falsification of public document and dishonesty and, thus, recommended that he be dismissed from the service with forfeiture of any retirement benefits. The pertinent portions of the OCA's Memorandum dated November 12, 2004[3] state:

> The Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act [No.] 6713, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service (*Alain vs. Alauya*, 268 SCRA 628) and no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary (*Rabe vs. Flores*, 272 SCRA 415). Dishonesty and falsification are malevolent acts that have no place in the judiciary.
>
> Given the foregoing, the Court lets it known to all that adherence to its stringent policy on the judiciary employees' qualifications and conduct shall not be compromised. The court condemns and would never countenance any conduct, act or omission of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the people's faith in the judiciary (*OCA vs. Cabe*, 334 SCRA 348).
>
> In A.M. No. OCA-01-5 (*CSC v. Reynaldo B. Sta. Ana*, August 1, 2004), respondent stated in his Personal Data Sheet that he passed the career service professional examination when in truth, upon verification, he did not, leading to the conclusion that he submitted a false certificate of eligibility. Such act made respondent liable for falsification of a document by making an untruthful statement in a narration of facts under Article 171, par. 4 of the Revised Penal Code as well as for the use of falsified documents under Art. 172 of the same Code.
>
> The accomplishment of the Personal Data Sheet being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of an

[3] *Id*., pp. 38-40.

untruthful statement therein was therefore intimately connected with such employment. This is the Court's ruling in *Inting vs. Tanodbayan*, 97 SCRA 494, and in *Belosillo vs. Rivera*, 341 SCRA 1, the Court held that since truthful completion of PDS is a requirement for employment in the Judiciary, the importance of answering the same with candor need not be gainsaid.

Herein respondent's act of making a false statement in his PDS renders him administratively liable for falsification and dishonesty. It is considered a grave offense sanctioned by the Civil Service Rules pursuant to the Administrative Code of 1987 with the corresponding penalty of dismissal from service upon commission of the first offense.

Respondent's use of false document for his benefit prejudiced the other applicants who were genuinely qualified for the position and it did not matter whether or not it caused an actual injury to a third person. In *People vs. Po Giok To*, 96 Phil. 913, it was held that when official documents are falsified, "the intent to injure a third person need not be present because the principal thing punished is the violation of the public faith and the destruction of the truth as therein proclaimed." By making a false statement in his PDS to enhance his qualification and increase his chances of being considered for employment, which in fact happened because he was issued an appointment as Clerk III, respondent prejudiced the other qualified aspirant to the same position.

Respondent Mayor tries to justify the false entries in his PDS but his explanation borders on incredulity. He cites wrong perception, lack of attention and complacency as the culprits. On all three (3) questions, his wrong answers favor him personally as he has interest to the position he applied for. Contrary answers could have adverse effect on his employment application.

In fairness, the respondent may be given the benefit of the doubt. But then again, this Office is of the belief that respondent was aware of his answer to the PDS questions because he lied not only once but thrice. Further, if respondent was not dishonest and did not lie with deliberate intent, what is in doubt then is his competence and seriousness in making entries in an official document. The making of such entries should be handled with prudence, caution and candidness expected of a job applicant but he unfortunately failed to exercise them. The qualifications required of a public servant or

a would-be government employee is thus found to be sadly lacking in his character and traits.

In the recent case of *Judge Jose S. Sañez vs. Carlos B. Babina*, A.M. No. P-03-1691, September 18, 2003, respondent's conduct of making untruthful statement in a narration of facts in his personal data sheets constitutes dishonesty as well as falsification defined and penalized under Article 171 of the Revised Penal Code. It goes on saying that a person's integrity is so essential a requirement to a public office that Rule V of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) bars the appointment of persons guilty of dishonesty.

In the abovementioned A.M. No. OCA-01-5, the Office of the Court Administrator recommended suspension for one (1) year without penalty for the respondent owing to such mitigating factors as the following:

1. that he has served the Court for more than twenty (20) years;
2. that the administrative complaint is the first against him;
3. that he could have committed the wrongful act for the benefit of his family;
4. that his admission and prayer for forgiveness is a good sign that he is indeed remorseful for what he did;
5. that he deserves to be penalized but the sanction may be tempered in the name of compassionate justice;
6. that he did not defraud and prejudice the government by his acts;
7. that he neither assumed the position he desired nor received the compensation and benefits pertaining thereto; and
8. that he appears to be an asset of his office and his efficiency is shown by his performance ratings.

In spite of the above circumstances, the Court did not reduce the penalty; instead, it still imposed the extreme punishment of dismissal from the service with prejudice to reemployment in any government-owned or controlled corporation, and with forfeiture of unused leaves, if any, and retirement benefits. A motion for reconsideration was filed but the Court, in its resolution dated 17 December 2002, only

modified the decision insofar as it allowed the respondent to claim his accrued leave credits but affirmed the decision in all other aspects.

In closing, the Court stressed that it cannot turn a blind eye to what is clearly a transgression of the law. Because of the respondent's conduct, it seriously doubts his ability to perform his duties with the integrity, uprightness, and honesty demanded of an employee in the judiciary.

If the Court did not consider the reasons/justifications that could have mitigated the liability of Sta. Ana, herein respondent Mayor, who could not present a tenable defense in the instant case, should have no fall back to evade being dismissed from the service.

The recommendation of the OCA is well taken.

Respondent's answer to Question No. 25 that there was no pending criminal case filed against him is belied by the Information for Libel, dated September 5, 2002, filed on September 13, 2002 with the Regional Trial Court, Branch 82, Odiongan, Romblon and docketed as Criminal Case No. 1523, entitled "*People of the Philippines v. Gilbert R. Minano, Cyril Mayor, Marvin Arboleda, and Manuel R. Recto,*" which was pending at the time he accomplished his PDS on February 19, 2003, and during the effectivity of his appointment as Clerk III on June 4, 2003. The said Information[4] states:

INFORMATION

UNDERSIGNED, accuses GILBERT R. MINA[N]O, CYRIL T. MAYOR, MARVIN ARBOLEDA and MANUEL R. RECTO of the crime of "Libel" committed as follows:

> That during or between July 15 and August 15, [2001], in the Municipality of Odiongan, Province of Romblon, Philippines, where complainant resides and within the jurisdiction of this Honorable Court, the abovenamed accused, as Associate Editor, Editor-in-Chief, Circulation Manager, and Publisher, respectively, of the "Romblon Today," a newspaper published monthly and circulated in the Province of Romblon, did then and there, with intent to cause dishonor, discredit and contempt to herein complainant, maliciously, criminally and

[4] *Rollo,* pp. 9-10.

feloniously conspired, confederated and helped one another in the publication of a banner headline article in the July 15 to August 15, 2001 issue of said "Romblon Today" authored by respondent Gilbert R. Minano containing highly libelous statements against complainant, to wit:

TIELCO SERVICIO "PALPAK" "PALPAK," "INUTILE," is the new name of the Tablas Electric Cooperative (TIELCO).

all of which are false and constitute a public and malicious imputation of a vice or defect in writing tending to cause the dishonor, discredit or contempt of herein complainant who thereby suffered irreparable damage and prejudice by reason thereof in the amount of ₱1,000,000.00 as actual and moral damages and ₱₱500,000.00 as exemplary damages for which respondents would be held jointly and severally liable.

CONTRARY TO LAW.

Odiongan, Romblon, 05 September 2002.

Under Section 52 (A)(1) and (A)(6), Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service" (Resolution No. 99-1936 dated August 31, 1999), respondent's act of making untruthful declarations in his PDS renders him administratively liable for falsification of public document and dishonesty which are classified as grave offenses and, thus, warrant the corresponding penalty of dismissal from the service even if either of them is respondent's first offense.[5] Section 58 of Rule IV thereof states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

The importance of accomplishing a PDS with utmost honesty cannot be stressed enough.[6] The accomplishment of a PDS is a requirement under Civil Service Rules and Regulations in connection with employment in the government. The making of untruthful statements therein is, therefore, connected with

[5] *Calumba v. Yap*, A.M. No. P-08-2506, August 12, 2008.

[6] *Re Anonymous Complaint Against Mr. Rodel M. Gabriel*, A.M. No. 2005-18-SC, April 19, 2006, 487 SCRA 370.

such employment. As such, making a false statement therein amounts to dishonesty and falsification of an official document. Dishonesty and falsification are considered grave offenses. The Court has not hesitated to impose the extreme penalty of dismissal from the service on employees found guilty of such offenses.[7]

Respondent's claim that since the Prosecutor's Resolution, which recommended the filing of the information for libel, is on appeal with the Department of Justice (DOJ), the matter should not be considered as a pending criminal case against him cannot be considered as an acceptable excuse. By making a check mark on the space provided for the "No" answer with regard to pending criminal case against him, respondent was guilty of falsification of a public document. Even prescinding from respondent's argument that, technically, there is no case as yet filed against him, still respondent is duty-bound to write the docket number of the criminal case for libel against him and indicate the status of the case as "pending appeal with the DOJ" if he has been really acting in good faith and not make it appear that he has a clean slate in terms of criminal record. In answer to Question No. 28, respondent willfully failed to disclose that he was terminated by LRTA on the pretext that the illegal dismissal case which he and his co-employees have filed against LRTA is still pending appeal with the National Labor Relations Commission. As to his denial that he had been a candidate in the local elections, respondent cannot find solace by invoking good faith.

One who invokes good faith must show honesty of intention, free from knowledge of circumstances which ought to put one upon inquiry.[8] Respondent falsified an official document to gain unwarranted advantage over other more qualified applicants to the same position. He cannot be said, therefore, to have measured

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[7] *Ratti v. Mendoza-De Castro*, A.M. No. P-04-1844, July 23, 2004, 435 SCRA 11.

[8] *Disapproved Appointment of Noraina D. Limgas as Stenographer III, RTC, Branch 8, Marawi City*, A.M. No. 04-10-619-RTC, February 10, 2005, 450 SCRA 560.

up to the standards required of a public servant.[9] The Court cannot take on its face value respondent's blanket claim of good faith and inadvertence to justify his mental dishonesty and false declarations in the three entries of his PDS. Respondent cannot feign ignorance of the falsities he has declared as he is the Editor-in-Chief of the newspaper "Romblon Today" and cannot be said to be someone who lacks schooling or has a difficulty in comprehending its plain import. Per his PDS, respondent had his college from 1982-1986 at the University of the East and graduated with the degree of Bachelor of Arts (AB), Major in Political Science. He took up Law at the same university for one year, stating "up to First Year, Second Semester" without indicating the specific year. It cannot be said that respondent did not fully understand the details he filled out in the PDS. In Item No. 31, it states "I declare that the answers given above are true and correct" which means that a government employee who will affix one's signature therein declares that all the information supplied in the PDS are true and correct to the best of the declarant's personal knowledge. All things being equal, another employee who possesses similar qualifications should have been appointed had it not been for the misrepresentations of respondent.

In *Administrative Case For Dishonesty And Falsification Of Official Document Against Noel V. Luna, SC Chief Judicial Staff Officer*,[10] the Court reiterated that every employee of the judiciary should be an example of integrity, uprightness, and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the court's good name and standing. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private

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[9] *Aglugub v. Perlez*, A.M. No. P-99-1348, October 15, 2007, 536 SCRA 20.

[10] A.M. No. 2003-7-SC, December 15, 2003, 418 SCRA 460.

conduct in order to preserve the good name and integrity of the courts of justice. Respondent in this case failed to meet the stringent standards set for a judicial employee; hence, he does not deserve to remain in the office staff of the judiciary.

WHEREFORE, respondent Cyril T. Mayor, Clerk III, Metropolitan Trial Court, Branch 13, Manila is found *GUILTY* of *DISHONESTY* and *FALSIFICATION OF PUBLIC DOCUMENT* and is hereby *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Quisumbing (Acting C.J.), Ynares-Santiago, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.*, concur.

Puno, C.J. and *Reyes, J.*, on official leave.

Austria-Martinez, J., on leave.

EN BANC

[A.M. No. P-06-2273. October 24, 2008]
(Formerly OCA-I.P.I. No. 06-2435-P)

JUDGE REBECCA R. MARIANO, *complainant, vs.* **MARISSA R. MONDALA, Court Legal Researcher II, Regional Trial Court, Branch 136 Makati City,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CODE OF CONDUCT

FOR COURT PERSONNEL; PROFESSIONALISM, RESPECT FOR THE RIGHTS OF OTHERS, GOOD MANNERS AND RIGHT CONDUCT ARE EXPECTED OF ALL COURT EMPLOYEES. — Respondent and all court personnel for that matter should be reminded that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.

2. ID.; ID.; ID.; ID.; ABSENTEEISM AND HABITUAL TARDINESS CONSTITUTE GROSS DISHONESTY OR SERIOUS MISCONDUCT; PENALTY; CASE AT BAR. — With regard to the charge of habitual tardiness and absenteeism, the policy to be followed is found in Section II of Administrative Circular No. 2-99 entitled "Strict Observance of Working Hours and Disciplinary Action for Absenteesim and Tardiness" which states: II. Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct. As found by the Investigating Judge, respondent is culpable of frequent absenteeism and tardiness, as well as falsification of her Daily Time Record. Complainant presented sufficient proof that respondent had been late for 13 times in February 2005, 18 times in March 2005, 12 times in April 2005, 10 times in May 2005, 11 times plus four (4) absences in June 2005 and 13 times in July 2005. Respondent did not submit her Daily Time Record for the month of August 2005 which shows that she had been late 11 times. Respondent was likewise shown to have no reservations about making false statements in the Daily Time Record as she has done so for years. By her habitual tardiness and absenteeism respondent has caused inefficiency in the public service. Unauthorized absences are punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal

for the second offense with the degree of absenteeism and tardiness which would merit the supreme penalty of dismissal characterized as frequent, habitual and unauthorized.

3. ID.; ID.; ID.; ID.; COURT PERSONNEL ARE REQUIRED TO PERFORM THE DUTIES OF THEIR OFFICE WITH UTMOST DEDICATION AND EFFICIENCY; CASE AT BAR. — As to the charge of inefficiency and neglect of duty, the Court concurs with the Investigating Judge's declaration that respondent has been remiss in her duties as legal researcher. Indeed, she has shown herself to be less than zealous in the performance of the duties of her office which demands utmost dedication and efficiency.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint against respondent Marissa Mondala (respondent), Court Legal Researcher II of the Regional Trial Court (RTC) of Makati City, Branch 136 for violation of the Code of Conduct for Court Personnel.

The instant case stemmed from a missive dated 24 August 25 2008 written by complainant Judge Rebecca R. Mariano (complainant) addressed to Judge Sixto C. Marella, Jr., (Judge Marella, Jr.), Executive Judge of RTC of Makati City, requesting the transfer of respondent to the Office of the Clerk of Court for habitual tardiness, absenteeism and due to an incident on 22 August 2005 which caused an air of animosity among her staff. Thereafter on 26 August 2005, Judge Sixto Marella, Jr. issued a Memorandum to respondent informing her that she was detailed to the Office of the Clerk of Court, RTC of Makati City and directing her to report to Atty. Engracio M. Escasinas, Jr.[1]

Respondent, for her part, submitted a letter dated 31 August 2005 to detail what allegedly had actually transpired during the said incident on 22 August 2005.[2]

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[1] *Rollo*, p. 9.

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

Subsequently, Judge Marella, Jr. issued a 1st Indorsement for appropriate action on respondent's letter. Then, complainant issued a 2nd Indorsement,[3] charging respondent with violation of the Code of Conduct for Court Personnel, specifically: (1) insubordination and gross disrespect towards the judge; (2) habitual tardiness and absenteeism; and (3) inefficiency and neglect of duty. Thereafter, complainant requested the OCA for this 2nd Indorsement to be treated as an administrative complaint against respondent.[4]

The new Executive Judge Winlove M. Dumayas (Judge Dumayas) conducted an investigation on the matter. Complainant presented herself as well as the following as witnesses: Atty. Teodorico L. Diaz, Ryan Jesus R. Mariano, Gerry P. Lagera, Jr., Teodorico A. Duran, Dwight Dichoso, Manuela A.T. Mayor, Marilyn Begantinos-Bercasio, Felomena Isidro and Atty. Gwyn Gareth Mariano.

The evidence for complainant showed that on 22 August 2005, complainant asked respondent regarding the status of a case as it was due soon. When respondent replied that she was still working on it, complainant told her off that she could not finish her tasks on time due to her frequent disappearances from the office.[5]

Afterwards, complainant went inside the chambers and respondent, with a case folder in hand, followed her. Respondent then banged the case files on the table and shouted out loud that complainant had been unfair to her and demanded to know why she was being monitored.

Complainant replied that her actions were due to respondent's tardiness, frequent disappearances during official time and the information that she had been extorting money from litigants allegedly to be given to the complainant and to the prosecutor. Moreover, news had reached complainant that respondent was

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[3] *Id*. at 15-22. The OCA was furnished with copies of both indorsements.

[4] *Id.* at 4.

[5] *Id.* at 16.

seen by some people talking to clients or lawyers outside the court. Complainant also pointed out to respondent that even her co-workers had expressed their dislike for her and in fact, they had all signed for her transfer.[6]

The incident occurred in the presence of complainant's visitors, Manuela A.T. Mayor and Teodorico Duran. Atty. Teodorico Diaz also entered the chambers to pacify respondent. And even outside the chambers, respondent continued her tirade against complainant.

As proof of respondent's frequent tardiness and absenteeism, complainant presented her daily time record. And it was shown that respondent had been late 13 times in February 2005, 18 times in March 2005, 12 times in April 2005, 10 times in May 2005, 11 times (plus four (4) absences) in June 2005, 13 times in July 2005 and 11 times in August 2005.[7]

Dwight Dichoso also testified that he was frequently asked to pitch in as court interpreter whenever respondent was late or absent during hearings requiring the services of an interpreter.[8]

To prove that respondent frequently left the office without permission or official reason, her co-workers Gerry Lagera and Ryan Jesus R. Mariano testified that they had seen her at 1:30 p.m., on 19 August 2005, a working day, walking toward J.P. Rizal.[9]

As proof that respondent had asked money from litigants, Marilyn Begantinos-Bercasio testified that respondent had told her that if she wanted to have a favorable decision in her case, she should give respondent ₱40,000.00, to be given to complainant and the assistant city prosecutor. However, as she did not have such amount, Ms. Begantinos-Bercasio decided to just await the court decision.[10] Likewise, Atty. Gwyn Gareth Mariano

[6] *Id.* at 16.

[7] *Id.* at 177-181.

[8] *Id.* at 182.

[9] *Id.* at 27; *Pinagsanib na Sinumpaang Salaysay*.

[10] *Id.* at 216.

testified that respondent had approached him offering assistance in two (2) cases he was handling — one in which respondent had assured him that she could secure the denial of the motion of the opposing party for the price of ₱200,000.00, and the other in which respondent had intimated that she could facilitate the denial of the prosecution's documentary exhibits for a fee of ₱50,000.00. Atty. Mariano, however, declined respondent's offer.[11]

After respondent was detailed to the Office of the Clerk of Court, she allegedly continued to harass complainant by giving out her residential address to one of the litigants before her sala, well aware that she was not supposed to. She also allegedly held on to a particular decision without the knowledge of complainant and even while fully aware that said decision had been included in the monthly report prepared for and submitted to the Supreme Court. Upon her transfer to the Office of the Clerk of Court, respondent reported to the Supreme Court that complainant had falsified her monthly report and for which infraction, complainant was meted out a fine.

Complainant clarified that her request for respondent's transfer was not motivated by ill will but was the result of respondent's behavior, including her habitual tardiness and absenteeism. Complainant averred that respondent had ceased to be an effective and efficient worker and as such, she prayed for her dismissal from service.

For her defense, respondent testified on her behalf and presented the following as witnesses: Jadi Hatab,[12] Tessie P. Clavejo,[13] Venus L. Florida and Myrna Dacapio. The testimony of Maricor Viegan was dispensed with being merely corroborative of Dacapio's testimony.

Respondent admitted that an altercation did occur between her and complainant but countered that it was complainant who

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

[12] *Id.* at 135-136.

[13] *Id.* at 133-134.

started it by scolding her in the presence of around three (3) other court personnel. Respondent also confirmed that the confrontation in the chambers took place in the presence of a female visitor and that the shouting had prompted the Branch Clerk of Court to come inside the chambers and help address the situation. Respondent, however, asserted that the affidavit Manuela A.T. Mayor had executed should not be given credence for being partial and biased as she allegedly had a close relationship with complainant.[14]

Respondent likewise alleged that the affidavit executed by her co-workers was a ceremonial act done to appease complainant.

Respondent refuted complainant's allegations of inefficiency by attaching several decisions she had drafted and which bore complainant's corrections.[15] Respondent also refuted the allegations of her habitual tardiness and absenteeism by presenting her daily time record. In addition, she contended that the charge that she had asked or demanded money from litigants on behalf of the complainant and the city prosecutor is totally false.

Respondent presented Jadi Hatab to attest to her good character based on his personal experience and relationship with respondent.

After hearing both complainant and respondent and their respective witnesses, as well as going over the documentary evidence submitted by the parties, the Investigating Judge found that all the charges imputed to respondent had been substantiated. As such, he recommended that respondent be meted out the penalty of suspension for a period of one (1) year without pay.

The Court adopts the findings and conclusions of the Investigating Judge but finds the penalty too lenient in light of the circumstances.

As to the charge of insubordination and gross disrespect for the complainant, the Court agrees that indeed, the altercation between complainant and respondent has been established by evidence. Complainant pertinently testified as follows:

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

[15] *Id.* at 63-126.

Q: Madam witness, you claim in your Affidavit that the respondent is disrespectful to you specially on August 22, 2005, the date of the incident, correct?
A: Yes.

Q: Ma'am, prior to the date of the incident, how was your relationship with the respondent?
A: We have bad blood relationship.

Q: Would you tell exactly the period that you have bad relationship with respondent prior to the incident happened?

x x x x x x x x x

A: I first reported to Makati City Hall in 2001, since then the respondent acted as my interpreter but she had not been doing her job. Every now and then I would remind her, do not be late and perform your duty but her action did not change until she voluntarily applied as the [*sic*] legal researcher. She knows very well, that I am not wanting [*sic*] her to be appoint as legal researcher because of her past action but she warned me that being ahh … what do called it, ah.. an employee Ahh… next in rank, she could be appointed due to the resignation of my former legal researcher. In short, there is no voluntariness on my part in appointing her because of her… well, of her action, of not doing her job, her performance.

x x x x x x x x x

A: Well, the bad relationship sometime in 2002 or 2003 after I have observed your performance in the office.[16]

Respondent, on the other hand, on cross-examination testified as follows:

Q: So at any rate, you tell Judge Mariano, ***"bakit mo ko mino-monitor?"***
A: On that incident happened?

Q: Yes, you asked this right? Why would [*sic*] asked your boss this kind of question?
A: I would say that I was a victim that time and any reasonable man would do the same when you are confronted with any

[16] TSN, 23 March 2007, pp. 17-20.

accusation, which was no basis at all. Do not compare that to any person who would accused [*sic*] you of anything because we were surprise by that accusation, you know.

x x x x x x x x x

Q: Did it not occur to you to defer asking Judge [*sic*] in the presence of this person or wait for a time for you to visit her in her room?

A: Honestly, the presence of that visitor who listened [in] her presence, give me more reason to do that way, to ask and clear myself with Judge Mariano [*sic*].

Q: Why [*sic*] the presence of that visitor compel you to do that way?

A: As I said earlier, I don't want that person to leave the office with that idea stuck on her mind.

Q: And why, this person is important to you?

A: Of course.

Q: Why?

A: I don't have any control over her. How can I defend myself if she is already outside of the building. How can I ever de[f]end myself if she is already out and saying those things she witnesses.

x x x x x x x x x

A: I had that conversation with Judge Mariano, I had (to) explain myself, right then and there before that person leave for me not to go or exert any more effort of explaining, that's what I'm trying to prevent.

Q: What are you trying to prevent?

A: Explaining myself because I have no control with the action of that person, if she would be in the outside of the office, *di ba*? She's just a visitor *eh*.[17]

The Court finds reprehensible respondent's verbal assault on her superior, the complainant, inside the latter's chambers and worse, in the presence of a guest of the latter. It should be stressed that shouting at one another in the workplace and during

[17] TSN, 24 September 2007, pp. 16-18, 20.

office hours is arrant discourtesy and disrespect not only towards co-workers, but to the court as well.[18] Respondent and all court personnel for that matter should be reminded that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.[19]

The Court also agrees with the Investigating Judge's finding that respondent exploited her position to obtain monetary concessions from lawyers and litigants.[20] Respondent likewise used her position and her access to court records to make it appear that complainant had falsified the report of cases she submitted to the Supreme Court on top of the many false accusations and allegations she had leveled against complainant in her desire to get even with her. In this regard, respondent testified as follows:

Q: Apparently, at this point you have no desire whatsoever to protect Judge Mariano, is that right, yes or no?
A: I am not under obligation to protect her *na* because this is [*sic*] a proceedings against me not the proceedings against her. Had it been Judge Mariano (who) was charge(d) maybe I will protect her.

Q: When [did] this desire of yours to protect Judge Mariano's ceased?
A: When she turned against me.

Q: And when was that?
A: When she issued that memorandum to Executive Judge Marella.

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[18] *Aquino v. Israel*, A.M. No. P-04-1800, 25 March 2004, 426 SCRA 266, 267.

[19] *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003).

[20] Report of the Investigating Judge, p. 18.

Q: In your explanation, because Judge Mariano turned against you, you have to do something against her and you were able to do so, is that right?
A: That is incorrect. I have to do something to protect myself and if in the process, she would be hurt I cannot control it, because she was the one who started this.

Q: And her being hurt it's just a consequence of your desire to protect yourself?
A: Yes, Ma'am.

Q: And this includes hurting her son, her family and as a judge and as staff in the Court, you don't care as long as you protect yourself, is that right?

x x x x x x x x x

Q: And you do not care if you also hurt her reputation as a person or as a judge, is that right Ma'am?
A: Yes, sir…(interrupted)

Q: And you do not care if you hurt her family, her husband, her son just to protect yourself, is that right, Ma'am?
A: That's correct.

Q: And you don't care if you hurt the staff as to protect yourself?
A: For your satisfaction, yes, Ma'am. But please let us not forget that I am the first one who is the victim here, the first who was hurt, my family was hurt. I was humiliated here in Court, judge(d) by the employees here and hated mostly by others because of this incident. So if you are saying that because I had said this statement to Judge Mariano, she was hurt, her husband was hurt, her staff was hurt, I was the very first person who was hurt Ma'am.

Q: Okay. And so because you were hurt, you have (been) victimized, you have to hurt Judge Mariano back, Yes or No?
A: I am just protecting myself, Ma'am.[21]

Q: The other reason why you (were) so hurt by Judge Mariano's actions is because you thought of yourself so close to Judge Mariano.
A: Not actually, I was hurt because of that memorandum coming from Judge Marella [,Jr.] citing all those grounds and asking

[21] TSN, 23 November 2007, pp. 13- 16.

me to report immediately to Atty. Escaseñas [*sic*] or the Clerk of Court. My hatred if you say so become.. my hate from Judge Mariano… interrupted…

Q: You hate Judge Mariano?

Atty. Ambrocio: You had to teach her a lesson.

A: Because it was damaging on my part, *di ba*? We are assisting our Judge and yet we employees of this Court cannot receive justice from our own house.[22]

Q: That you wanted to take revenge? You wanted to embarrass her?

A: No, Ma'am. It is contain(ed) in the proper perspective.

Q: And what is contained in the proper perspective?

A: Because as you know, Ma'am, I got angry with Judge Mariano right after the incident she refused to talk to me, she refused to recognize me, my existence, then after that I was blocked with [a] memorandum coming from Judge Marella, Jr. ordering me of my transfer to the OCC. I was surprised because I was not given the chance by Judge Mariano to explain myself, she did not issue me a memorandum according to her against certain rules. And another order finding my explanation unsatisfied [*sic*] that would be the basis had she done that to transfer to Judge Marella, Jr. those things she did not do, that's why I'm [*sic*] felt so angry at that time.

Q: So, you are so angry, what did you want to Judge Mariano [*sic*]?

A: To make things in the proper perspective. Because I should not be treated that way. I should be given some courtesy at least as an employee.

Atty. Ambrocio:

Q: You did not give Judge Mariano any courtesy when you confronted her in front of her visitor?

A: I had been courteous with Judge Mariano.

Q: You called that being courteous, a subordinate asking a judge ***"Bakit mo ko minomonitor ng ganito?"***

A: Because she was accusing me, that was still a reply *nga*, ***"ang sabi kasi n'ya eh, binabantayan ko mga kilos mo"for***

[22] TSN, 11 October 2007, pp. 25-26.

> ***anybody*** who is in her right mind, would reply that, the same what I have done, ***"Bakit mo ko minomonitor di ba?" "Sa kanya nanggaling 'yon eh, hindi sa akin."***[23]

The foregoing clearly shows that respondent's act and utterances constitute discourtesy, insubordination and disrespect towards her superior.

With regard to the charge of habitual tardiness and absenteeism, the policy to be followed is found in Section II of Administrative Circular No. 2-99 entitled "Strict Observance of Working Hours and Disciplinary Action for Absenteesim and Tardiness" which states:

> II. Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct.

As found by the Investigating Judge, respondent is culpable of frequent absenteeism and tardiness, as well as falsification of her Daily Time Record. Complainant presented sufficient proof that respondent had been late for 13 times in February 2005, 18 times in March 2005, 12 times in April 2005, 10 times in May 2005, 11 times plus four (4) absences in June 2005 and 13 times in July 2005. Respondent did not submit her Daily Time Record for the month of August 2005 which shows that she had been late 11 times. Respondent was likewise shown to have no reservations about making false statements in the Daily Time Record as she has done so for years.[24] By her habitual tardiness and absenteeism respondent has caused inefficiency in the public service.

Unauthorized absences are punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense with the

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[23] TSN, 24 September 2007, pp. 34-35.

[24] Report of the Investigating Judge, p. 29.

degree of absenteeism and tardiness which would merit the supreme penalty of dismissal characterized as frequent, habitual and unauthorized.[25]

As to the charge of inefficiency and neglect of duty, the Court concurs with the Investigating Judge's declaration that respondent has been remiss in her duties as legal researcher. Indeed, she has shown herself to be less than zealous in the performance of the duties of her office which demands utmost dedication and efficiency.

Considering that respondent has been found guilty of all the three charges, the Court finds that the recommended penalty of suspension for one (1) year without pay as insufficient. Especially egregious is the finding that respondent had exploited her position as an officer of the court to obtain monetary concessions from lawyers and litigants. Her activities have compromised the integrity of the judicial system. Appropriately, her dismissal from the service will excise a cancerous blight that has stained the work force of the judiciary.

WHEREFORE, Marissa Mondala is found *GUILTY* of *INSUBORDINATION, HABITUAL TARDINESS, INSUBORDINATION* and *INEFFICIENCY AND NEGLECT OF DUTY* and is hereby *DISMISSED* from the service, with forfeiture of all benefits and privileges except accrued leave credits, if any, with prejudice to re-employment in any branch or agency of the government, including government-owned and controlled corporations.

SO ORDERED.

Quisumbing (Acting C.J.), Ynares-Santiago, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Puno, C.J. and *Reyes, J.,* on official leave.

Austria-Martinez, J., on leave.

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[25] *Reyes-Macabeo v. Valle*, 448 Phil. 583, 590 (2003).

EN BANC

[A.M. No. RTJ-07-2074. October 24, 2008]
(Formerly A.M. No. 07-5-18-SC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **RET. JUDGE IRENEO LEE GAKO, JR., Branch Clerk of Court MANUEL G. NOLLORA, Legal Researcher NILDA D. SUYKO, Clerk of Court VII ATTY. JEOFFREY S. JOAQUINO and Administrative Officer II, MONICA V. DIONALDO,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CALENDAR OF CASES; ASSIGNMENT OF CASES; DONE EXCLUSIVELY BY RAFFLE IN OPEN COURT AFTER PROPER NOTICE TO THE PARTIES; RATIONALE. — Significantly, Section 2, Rule 20 of the 1997 Rules of Civil Procedure provides that the "(t)he assignment of cases to the different branches of a court shall be done exclusively by raffle. The assignment shall be done in open session of which adequate notice shall be given so as to afford interested parties the opportunity to be present." It must be emphasized that rules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law. It must likewise be stressed that the raffle of cases is vital to the administration of justice because it is intended to insure impartial adjudication of cases and obviates public suspicion regarding the assignment of cases to predetermined judges. The need for strict compliance with the rules on raffle cannot be overemphasized and any deviation or disregard of the rules should not be countenanced.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; SHOULD ADMINISTER THEIR OFFICE WITH DUE REGARD TO THE INTEGRITY OF THE SYSTEM ITSELF, REMEMBERING THAT THEY ARE NOT DEPOSITORIES OF ARBITRARY POWER, BUT JUDGES UNDER THE SANCTION OF LAW; CASE AT BAR. — Again it should be stressed that as a judge, Judge

Gako, Jr. is expected to keep abreast of and be conversant with Supreme Court rules and circulars that affect the conduct of cases before him. More importantly, he should observe strict compliance with such rules at all times in his respective jurisdiction. Judges should administer their office with due regard to the integrity of the system itself, remembering that they are not depositories of arbitrary power, but judges under the sanction of law. Despicably failing in this regard, Judge Gako, Jr. should be duly sanctioned. And considering the fact of his retirement, the recommended penalty of a fine is in order.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; FAILURE ON THE PART OF RESPONDENTS TO FAITHFULLY ADHERE TO THE PUBLIC TRUST CHARACTER OF PUBLIC OFFICE DEMANDED FROM THEM WHO ARE INVOLVED IN THE SACRED TASK OF THE ADMINISTRATION OF JUSTICE WARRANTS DISCIPLINARY ACTION. — The Court likewise agrees with the Executive Justice's opinion that the irregularity and violations of the pertinent circulars could not have been committed brazenly and repeatedly for a long period of time if not for the cooperation of some of his employees specifically respondent Judge's co-respondents in this case. Hence, the findings of the Executive Justice on the degree of participation of respondents Dionaldo, Suyko, Atty. Joaquino and Atty. Nollora have to be sustained. All the respondents clearly violated the pertinent circulars and orders in relation to the raffle of cases. Despite the absence of proof that they derived any financial profit from the irregularities, respondents should be subjected to disciplinary action for failing to faithfully adhere to the public trust character of public office demanded from those involved in the sacred task of the administration of justice.

R E S O L U T I O N

TINGA, *J.*:

This is an Administrative Complaint against Retired Judge Ireneo Lee Gako, Jr., former Presiding Judge, Atty. Manuel G. Nollora, Branch Clerk of Court V, Nilda D. Suyko, Legal Researcher, Atty. Jeoffrey S. Joaquino, Clerk of Court VII and

Monica V. Dionaldo, Administrative Officer III, Office of the Clerk of Court, all of the Regional Trial Court (RTC) of Cebu City, Branch 5 for alleged irregularities committed by them.

The antecedents, as culled from the report of the Executive Justice, follow.

In a letter dated 4 January 2007,[1] Judge Simeon P. Dumdum, Jr., then the Executive Judge of the RTC of Cebu City, reported to the Office of the Court Administrator (OCA) that during the incumbency of Judge Gako, Jr. as Presiding Judge of Branch 5, he acted upon and granted petitions for voluntary confinement and rehabilitation of drug dependents, although the cases were not raffled to his branch. Judge Dumdum, Jr. requested that an inquiry be conducted on the matter. Notably, Judge Gako, Jr. compulsorily retired from the service on 20 September 2006.[2]

Accordingly, from 12 to 15 March 2006, Atty. Rullyn S. Garcia, Judicial Supervisor of OCA, investigated the matter. She submitted her report on 26 April 2007 to then Senior Deputy Court Administrator (DCA) Zenaida N. Elepaño, after interviewing Judge Dumdum, Jr., Judge Ramon B. Daomilas, Atty. Jeoffrey S. Joaquino, Atty. Manuel G. Nollora, Monica V. Dionaldo and Nida D. Suyko.[3]

On 2 May 2007, DCA Elepaño favorably endorsed the report to Court Administrator Christopher O. Lock, who thereafter, submitted a memorandum with recommendations to the Chief Justice Reynato S. Puno.[4]

In a Resolution[5] dated 12 June 2007, the Court treated the matter as an administrative complaint against Judge Gako, Jr., Atty. Joaquino, Atty. Nollora, Ms. Dionaldo and Ms. Suyko. The Court held in abeyance the release of the retirement benefits

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[1] *Rollo* (Vol II), p. 128.

[2] *Id.*

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

[4] *Id.* at 1-4.

[5] *Id.* a t 138-139.

of Judge Gako, Jr. and required all respondents to show cause why no disciplinary action should be taken against them. The Court also directed Judge Daomilas to make a physical inventory of pending petitions for voluntary confinement and rehabilitation of drug dependents in Branch 5 and to transmit them to the Executive Judge for raffle among the drugs courts in Cebu City. On 11 September 1997, the instant administrative case was referred to the Court of Appeals Executive Justice stationed in Cebu for investigation, report and recommendation.[6]

In his Explanation/Comment dated 8 August 2007,[7] Judge Gako, Jr. submitted that he had no knowledge that the petitions involved were not raffled off to Branch 5. He claimed that the Executive Judge or his substitute was duty-bound to conduct the raffle and that none of his staff members had ever confided to him that the petitions were "smuggled" to Branch 5.

Judge Gako, Jr. contended that he honestly believed that his court had jurisdiction over the petitions because he did not receive any written order or instruction from the Supreme Court, or OCA, or the Executive Judge that petitions for Voluntary Confinement and Rehabilitation of Drug Dependents were to be handled by drugs courts exclusively. He even suggested to Judge Dumdum, Jr. that the petitions be referred to the drugs courts but the latter merely assured him that he would first secure a clearance from the Supreme Court. Thus, he did not doubt the jurisdiction of his court to handle the petitions involved.[8]

For his part, Atty. Joaquino explained that it was Ms. Dionaldo's assignment to enter in the docket books and to raffle special proceedings cases such as petitions for voluntary confinement and rehabilitation of drug dependents. When he assumed office sometime in January 1995, he did not alter Ms. Dionaldo's work assignment as she was already quite adept at her duties.[9]

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

[7] *Rollo* (Vol. I), pp. 1-2.

[8] *Id.* at 1.

[9] *Rollo* (Vol 2), p. 1.

Atty. Joaquino also clarified that before the designation of the drugs courts, all petitions for voluntary confinement and rehabilitation of drug dependents were raffled to all branches. The system changed sometime in the middle part of 2004 when a directive was issued stating that all petitions for voluntary confinement and rehabilitation of drug dependents must be raffled to designated drugs courts.

Atty. Joaquino said that he did not suspect that Ms. Dionaldo would forward directly to Branch 5 the petitions without their having been raffled. Moreover, there was no complaint from Branch 5, relative to their receipt of said petitions directly from Ms. Dionaldo even without the accompanying minutes of the raffle.

After he discovered the anomaly, Ms. Dionaldo was relieved of her job assignment sometime in July 2006.[10]

Atty. Manuel G. Nollora, Branch Clerk of Court V of the RTC of Cebu City, Branch 5, denied the accusation that he failed to exercise control and supervision over Ms. Suyko, the legal researcher of Branch 5, who received the petitions from Ms. Dionaldo. He claimed that Ms. Suyko was fully aware of the regulation that all cases must be raffled. After receiving the petitions from Ms. Dionaldo, it was Ms. Suyko's duty to log them in the record book, to prepare the order for signing by Judge Gako, Jr. and thereafter, to release the order. He believed that all the petitions which were delivered by Ms. Dionaldo to Branch 5 have been regularly raffled to their branch since he witnessed around eighty-eight (88) such petitions that were actually raffled.

Atty. Nollora stressed that even if it was his obligation to exercise control and supervision over the staff of Branch 5, each employee is still mandated to perform his or her assigned tasks with diligence and utmost care.[11]

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[10] *Id.* at 150-152.

[11] *Id*.

Ms. Dionaldo explained that she had been designated as officer in-charge of raffling of Special Proceedings cases, including petitions for voluntary rehabilitation, even before Atty. Joaquino assumed office as Clerk of Court in 1995. She used to raffle such petitions to all regular courts. She admitted that after listening to the sad experiences related to her by petitioners, she was impelled to act on their cases without delay. Thus, she requested Judge Gako, Jr. of the RTC, Branch 5, to act on the petitions for rehabilitation. Ms. Dionaldo claimed that she did not forward the cases without the conformity of Judge Gako, Jr., while maintaining that the nature of such petitions needs swift response so as not to render nugatory its primary objective. Further, she explained that since the petitions were not adversarial, no one was prejudiced by their not having been raffled.[12]

Ms. Suyko, on the other hand, explained that it was her duty to receive the petitions after being forwarded to their branch by Ms. Dionaldo. She did not anymore inquire if the cases had indeed been raffled off to Branch 5 presuming that the cases brought to their office rightly belonged to their branch.

Judge Ramon B. Daomilas, Jr. reported that he had inventoried a total of 1,144 cases of Petitions for Rehabilitation received and acted upon by Branch 5 within the period 1986 to 2000. In 866 out of the 1,144 cases, the petitioner drug dependents were ordered released from confinement from drug rehabilitation centers, but were nonetheless required to undergo the aftercare and follow-up program. However, not a single report had been filed by the rehabilitation provider regarding the result of the aftercare program. Thus, he considered these cases still pending. Moreover, in 278 cases, the drug dependents have not been ordered released despite the lapse of the period of their confinement.[13]

After investigation, Executive Justice Antonio L. Villamor found respondents guilty of violating various Supreme Court circulars and administrative orders in relation to the raffle of

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[12] *Id.* at 157-158; Manifestation dated 21 August 2007.

[13] *Id.* at 94.

cases. There is no extant proof, however, that respondents financially profited therefrom, the Executive Justice reported. Nevertheless, the Executive Justice recommended that respondents be sanctioned as follows:

1. Retired **JUDGE IRENEO LEE GAKO[,] JR.**, Presiding Judge, RTC, Branch 5, Cebu City, be **FINED TWENTY THOUSAND PESOS (₱20,000.00)** to be deducted from his retirement benefits, for acting without authority on cases or petitions for voluntary confinement of drug dependents within the period 1998-2006, in violation of Supreme Court rules, directives, and circulars regarded as a less serious charge;

2. **MS. MONICA V. DIONALDO**, Retired Administrative Officer, RTC, Branch 5, Cebu City, be **FINED** for misconduct and neglect of duty, **equivalent to her salary for two months** to be deducted from her retirement benefits;

3. **MS. NIDA D. SUYKO**, Legal Researcher, RTC, Branch 5, Cebu City, be **FINED** for misconduct and neglect of duty, **equivalent to her salary for one month and one day,** and **STERNLY WARNED** that a repetition of the same or similar offense in the future will be dealt with more severely;

4. **ATTY. JEOFFREY S. JOAQUINO**, Clerk of Court, RTC, Cebu City, be **REPRIMANDED** for neglect of duty, and **STERNLY WARNED** that a repetition of the same or similar offense in the future will be dealt with more severely;

5. **ATTY. MANUEL G. NOLLORA,** Clerk of Court, RTC, Branch 5, Cebu City, be **REPRIMANDED** for neglect of duty, and **STERNLY WARNED** that a repetition of the same or similar offense in the future will be dealt with more severely.[14]

The recommendations except as to the amount of fine on Judge Gako, Jr. are well-taken.

The Court agrees with the Executive Justice that administrative sanctions should be imposed on the respondents. As correctly found by the Executive Justice, respondents ignored the procedure for the raffling of cases mandated by Supreme Court Circular

[14] *Id.* at 359.

No. 7, dated 23 September 1974, as amended by Supreme Court Circular No. 20, dated 4 October 1979, to wit:

I. Raffling of Cases

All cases filed with the Court in stations or grouping where there are two or more branches shall be assigned or distributed to the different branches by raffle. No case may be assigned to any branch without being raffled. The raffle of cases should be regularly conducted at the hour and on the day or days to be fixed by the Executive Judge. Only the maximum number of cases, according to their dates of filing, as can be equally distributed to all the branches in the particular station or grouping shall be included in the raffle. Cases in excess of the number sufficient for equal distribution shall be included in the next scheduled raffle, subject to the exceptions provided in paragraphs II and IV hereof.

II. Notice

Notice of the day and hour of the raffle shall be posted prominently in the bulletin boards of the Courts and at a conspicuous placed at the main door of the session hall of the Executive Judge. Other notices to the parties may be sent as the interest of justice may require on request of any party and with the prior approval of the Executive Judge. There shall be no special raffle of any case except on meritorious application in writing by any party to the case and with the approval of the Executive Judge.

III. Manner of Raffling

The raffle must be conducted at the lawyer's table in open court by the Executive Judge personally with the attendance of two other judges or, in case of the latter's inability, of their duly authorized representatives. In stations where there are only two salas[,] the Judges of both and either the Clerk of Court or the Branch Clerk of Court should be present. In the absence of the Executive Judge, the Judge at the station who is the most senior in point of appointment to the Judiciary shall personally conduct the raffle. Under no circumstance may any raffle be made in chambers. The raffle proceedings should be stenographically recorded, and minutes thereof shall be prepared and signed by the Judges (or their representatives) and the Clerk of Court in attendance. Immediately after the raffle on any particular day, the Executive Judge shall indicate the particular branch to which the case is assigned, the same to be written in words and in figures on the cover of the *Rollo* and on the first page of the original complaint

or information and initialed by the Executive Judge and the other two officers who attended said raffle.

The raffle must be conducted in such manner that all the branches of the Court in that station or grouping[,] including vacant salas, shall receive more or less the same number of civil, criminal, and other kinds of cases.

For purposes of facilitating implementation of the foregoing rules, a Raffle Committee composed of the Executive Judge and two other judges shall, as much as practicable, be constituted.

Further, Supreme Court Administrative Circular No. 1, dated 28 January 1988 provides:

8. *Raffle of Cases*:

8.1 Raffle of cases should be done in open session in the presence of lawyers and spectators, immediately after the court opens its sessions:

8.2 The Minutes of the Raffle should be distributed within 24 hours after completion thereof to the judges of the other salas, and a copy sent to the Office of the Court Administrator.

8.3 Special raffles should not be permitted except on verified application of the interested party who seeks issuance of a provisional remedy and only upon a finding by the Executive Judge that unless the special raffle is conducted, irreparable damage shall be suffered by the applicant. The special raffle shall be conducted by at least two judges in a multiple-sala station.

8.4 There must be strict compliance with Administrative Order No. 6, dated June 30, 1975, and Circular No. 7, dated 23 September 1974[,] requiring that no case may be assigned in multi-sala courts without raffle; a raffle committee composed of the Executive Judge and two other judges shall be constituted where practicable, raffle proceedings should be stenographically recorded, and the results signed by the Judges or their representatives and the Clerk of Court, and the branch assignment shall be recorded in words and figures on the *Rollo*.

Significantly, Section 2, Rule 20 of the 1997 Rules of Civil Procedure provides that the "(t)he assignment of cases to the different branches of a court shall be done exclusively by raffle. The assignment shall be done in open session of which adequate notice shall be given so as to afford interested parties the opportunity to be present."[15]

It must be emphasized that rules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law.[16] It must likewise be stressed that the raffle of cases is vital to the administration of justice because it is intended to insure impartial adjudication of cases and obviates public suspicion regarding the assignment of cases to predetermined judges.[17] The need for strict compliance with the rules on raffle cannot be overemphasized and any deviation or disregard of the rules should not be countenanced.[18]

Evidently, Judge Gako, Jr. acted on 518 petitions for voluntary confinement and rehabilitation filed from 1998 to 2006 although they were not raffled but merely brought directly to his sala, in clear violation of the above-quoted circulars of the Court. As a judge who is presumed to know the law and given the large number of petitions he had acted on without authority over an unwarranted length of time, Judge Gako, Jr.'s submission that he has knowledge of the non-raffle of the petition fails to sway the Court. To the contrary, the totality of the circumstances surrounding the case serves to cast doubt upon his motives such that good faith on his part cannot be presumed.

Again it should be stressed that as a judge, Judge Gako, Jr. is expected to keep abreast of and be conversant with Supreme

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[15] RULES OF CIVIL PROCEDURE, Rule 20, Sec. 2.

[16] *Atty. Hilario v. Hon. Ocampo III*, 422 Phil. 593, 604 (2001).

[17] *Opis v. Dimaano*, A.M. No. RTJ-05-1942, 28 July 2005, 464 SCRA 260, 268.

[18] *Medina v. De Guia*, Adm. Matter No. RTJ-88-216, 1 March 1993, 219 SCRA 153, 162, 175.

Court rules and circulars that affect the conduct of cases before him. More importantly, he should observe strict compliance with such rules at all times in his respective jurisdiction. Judges should administer their office with due regard to the integrity of the system itself, remembering that they are not depositories of arbitrary power, but judges under the sanction of law.[19] Despicably failing in this regard, Judge Gako, Jr. should be duly sanctioned. And considering the fact of his retirement, the recommended penalty of a fine is in order.

The Court likewise agrees with the Executive Justice's opinion that the irregularity and violations of the pertinent circulars could not have been committed brazenly and repeatedly for a long period of time if not for the cooperation of some of his employees specifically respondent Judge's co-respondents in this case. Hence, the findings of the Executive Justice on the degree of participation of respondents Dionaldo, Suyko, Atty. Joaquino and Atty. Nollora have to be sustained.[20] We quote said findings in part, to wit:

> As Administrative Officer, Ms. Dionaldo was expected to implement administrative policies and procedures. It was her duty to transmit to the Committee on Raffle all special proceedings cases and, thereafter, to send the records thereof to the proper drugs court. This she failed to do. She admitted that in fact a lot of unraffled cases were for several years immediately forwarded to Branch 5, which is not a drugs court sala.
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> x x x x x x x x x
>
> Ms. Dionaldo's excuse is untenable. No matter how urgent or meritorious a case may seem, this does not justify any, much less, repeated violations of Circular No. 7, which admits of no exceptions to the rule requiring the raffling of all cases.
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> Legal Researcher, Ms. Suyko, claimed that her duty was merely to receive cases, to list them in the record book, and to prepare a pro-forma order to be signed by retired Judge Gako, Jr. x x x Ms.

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[19] *Atty. Hilario v. Hon. Ocampo, III, supra* note 271.

[20] *Office of the Court Administrator v. Gines*, A.M. No. RTJ-92-802, 5 July 1993, 224 SCRA 261, 273-274.

Suyko's explanation is unmeritorious. In receiving cases, it was part of her duty, before signing the log book, to check if indeed the case was properly assigned to Branch 5 by simply perusing the frontispiece of the records of the case. Surely, she should not have received a case that had not been properly assigned to Branch 5. For this, she is guilty of dereliction of duty.

It is Atty. Joaquino's duty, as Clerk of Court and administrative officer of RTC, Cebu City, to supervise his subordinate, Ms. Dionaldo. It was incumbent upon him to check that Supreme Court circulars, especially those relating to the raffling of cases, were strictly observed. The nature of his duty requires him to exercise supervision and control of the office operations in RTC, Cebu City. This he failed to do. Had he faithfully done his duties as clerk of court, he would have discovered the anomaly early enough. He was too complacent and negligent in assuming that Ms. Dionaldo was performing her job efficiently simply because there were no complaints coming from Branch 5.

Further, it is Atty. Nollora's responsibility as Clerk of Court of RTC, Branch 5, Cebu City, to supervise his subordinate, Ms. Suyko. He takes charge of the administrative aspects of his business and chronicles its directions. As such, it was his duty to insure that the cases forwarded to their Branch underwent mandatory raffle. Had he done his duty, he could have immediately detected the irregularity that Ms. Suyco [*sic*] had been receiving non-raffled cases directly forwarded to Branch 5 either through the inspection of the daily transactions of his office, or in the inventory of cases, and in the pro-forma orders that Ms. Suyko usually prepares x x x[21]

Clearly, all the respondents clearly violated the pertinent circulars and orders in relation to the raffle of cases. Despite the absence of proof that they derived any financial profit from the irregularities, respondents should be subjected to disciplinary action for failing to faithfully adhere to the public trust character of public office demanded from those involved in the sacred task of the administration of justice.[22]

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[21] *Rollo* (Vol. I), pp. 356-357; pp. 12- 15 of the Report of the Executive Justice.

[22] *Office of the Court Administrator v. Villaflor*, A.M. No. P-05-1991, 28 July 2005, 464 SCRA 240, 249.

A final note. Records show that there were other administrative charges of which Judge Gako, Jr. was found guilty and penalized, as follows:

1) In *Joselito Rallos, et al. v. Judge Ireneo Gako, Jr.*, he was held guilty of grave abuse of authority and partiality, aggravated by dishonesty, and imposed a fine of Ten Thousand Pesos (₱10,000.00).

2) In *Ronaldo B. Zamora v. Judge Ireneo Gako, Jr.*, he was found guilty of Gross Ignorance of the law and suspended for three (3) months.

In the above cases, he was sternly warned that the commission of similar acts in the future would be dealt with more severely.

3) In *Doroteo Lagcao, et al. v. Judge Ireneo Gako, Jr.*, he was found guilty of utter disrespect towards a higher court and imposed a fine of Twenty Thousand Pesos (₱20,000.00) to be deducted from his retirement benefits.

4) In *City of Cebu v. Judge Ireneo Gako, Jr.*, he was found guilty of undue delay in rendering a decision which cost the City of Cebu substantial damages in uncollected real property taxes. He was imposed a fine of Forty Thousand Pesos (₱40,000.00) to be deducted from his retirement benefits.

In view of the foregoing, in this case Judge Gako, Jr. should be fined of Forty Thousand Pesos (₱40,000.00).

WHEREFORE, the recommendations of Executive Justice Antonio L. Villamor are hereby *ADOPTED* except as to the fine of Judge Gako, Jr.

Retired Judge Ireneo Lee Gako, Jr., Presiding Judge, RTC of Cebu City, Branch 5, is *FINED* Forty Thousand Pesos (₱40,000.00) to be deducted from his retirement benefits, for acting without authority in violation of Supreme Court rules and circulars;

Monica V. Dionaldo, Retired Administrative Officer, RTC of Cebu City, Branch 5, is *FINED* for misconduct and neglect of duty in an amount equivalent to her salary for two months to be deducted from her retirement benefits;

Nida D. Suyko, Legal Researcher, RTC, Branch 5, Cebu City, is *FINED* for misconduct and neglect of duty in an amount equivalent to her salary for one month and one day, and *STERNLY WARNED* that a repetition of the same or similar offense in the future will be dealt with more severely.

Atty. Jeoffrey S. Joaquino, Clerk of Court, RTC of Cebu City, is *REPRIMANDED* for neglect of duty, and *STERNLY WARNED* that a repetition of the same or similar offense in the future will be dealt with more severely;

Atty. Manuel G. Nollora, Clerk of Court, RTC of Cebu City, Branch 5, is *REPRIMANDED* for neglect of duty, and *STERNLY WARNED* that a repetition of the same or similar offense in the future will be dealt with more severely.

SO ORDERED.

Quisumbing (Acting C.J.), Ynares-Santiago, Carpio, Corona, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Puno, C.J. and *Reyes, J.,* on official leave.

Austria-Martinez, J., on leave.

FIRST DIVISION

[G.R. No. 153624. October 24, 2008]

JUDGE ADORACION G. ANGELES, *petitioner, vs.* **P/INSP. JOHN A. MAMAUAG, SPO2 EUGENE ALMARIO, SPO4 ERLINDA GARCIA and SPO1 VIVIAN FELIPE,** *respondents.*

SYLLABUS

POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 6975; THE PHILIPPINE NATIONAL POLICE (PNP) CHIEF HAS NO JURISDICTION TO ENTERTAIN AN APPEAL BY A PRIVATE COMPLAINANT IN THE GUISE OF A MOTION FOR RE-INVESTIGATION; CASE AT BAR. — At the outset, the Court notes that the issues raised by petitioner had already been settled by the Court in a kindred case, *The National Appellate Board (NAB) of the National Police Commission (NAPOLCOM) v. P/INSP John A. Mamauag, et al.* docketed as G.R. No. 149999. In the said case, the Court through its First Division ruled that RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Explains the Court in said decision: RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty. However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. In any event, a private complainant like Judge Angeles is not one of "either party" who can appeal under Sections 43 and 45 of RA 6975. The private complainant is a mere witness of the government which is the real party in interest. In short, private complainant Judge Angeles is not a party under Sections 43 and 45 who can appeal the decision of the disciplining authority. Thus, Judge Angeles has no legal personality to appeal the dismissal of the charges against Mamauag, *et al*. by the CPDC District Director in the Resolution of 10 April 1995. The motion for re-investigation filed by Judge Angeles with the PNP Chief is in substance an

appeal from the decision of the CPDC District Director. The PNP Chief had no jurisdiction to entertain Judge Angeles' appeal in the guise of a motion for re-investigation. Since the PNP Chief had no jurisdiction, all actions taken by the PNP Chief pursuant to the appeal is void. Thus, the Decision of the CPDC District Director dismissing the charges against Mamauag, *et al.* stands and is now final and executory. To recapitulate, the PNP Chief had no jurisdiction to entertain petitioner's appeal in the guise of a motion for re-investigation. Since the PNP Chief had no jurisdiction, all actions taken by him pursuant to the appeal is void. Thus, the April 10, 1995 resolution of the CPDC District Director, dismissing the charges against respondents, stands and is now final and executory.

APPEARANCES OF COUNSEL

Renecio R. Espiritu for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed and sought to be set aside in this petition for review on *certiorari* is the Decision[1] dated September 6, 2001 of the Court of Appeals (CA) in *CA-G.R. SP No. 61711*, as reiterated in its Resolution[2] of May 13, 2002, setting aside the July 3, 1997 resolution of Philippine National Police (PNP) Chief Recaredo Sarmiento II (PNP Chief), the March 3, 2000 decision and the June 30, 2000 resolution, both of the National Appellate Board (NAB) of the National Police Commission.

Briefly, the facts are as follows,

On March 2, 1995, petitioner's housemaids, Nancy Gaspar and Proclyn Pacay, were brought by a certain Agnes Lucero to the Baler Police Station 2, Central Police District Command

[1] Penned by Associate Justice Bernardo P. Abesamis (ret.), with Associate Justices Godardo A. Jacinto and Eliezer R. De Los Santos, concurring; *rollo*, pp. 24-31.

[2] *Id.* at 12.

(CPDC), Quezon City after they were found wandering aimlessly in a bus terminal. The incident drew the attention of the media and spawned several cases, among them is a complaint for grave misconduct filed by petitioner against P/ Insp. Roberto V. Ganias, SPO1 Jaime Billedo, herein respondents SPO2 Eugene V. Almario (Almario), P/Insp. John A. Mamauag (Mamauag), SPO1 Vivian M. Felipe (Felipe) and SPO4 Erlinda L. Garcia (Garcia) from which the present controversy takes root.

The administrative complaint sought therein respondent police officers' summary dismissal from service on ground of alleged serious irregularities committed by them in the handling of petitioner's criminal complaint for qualified theft against the two housemaids. Allegedly, while the housemaids were under police custody, several items of jewelry and clothing materials belonging to and stolen from her were found in the possession of housemaid Proclyn Pacay. Hence, petitioner's witnesses requested that the respondent police officers register the discovery of the stolen articles in the police logbook but the latter did not heed to the request. Moreover, the police officers allegedly refused to act upon the incident and to conduct further investigation.

The case was initially investigated by the Inspection and Legal Affairs Division of the CPDC which recommended the dismissal of the charges against the respondent police officers. In a resolution[3] dated April 10, 1995, the CPDC District Director approved the recommendation and dismissed the complaint.

Displeased with the outcome of her complaint, petitioner moved for a re-investigation of the case before the PNP Chief.

On June 7, 1996, upon conduct of summary proceedings, the PNP Chief issued a decision.[4] Dispositively, the decision reads:

WHEREFORE, this headquarters finds: Respondents P/CINSP Roberto Ganias, SPO1 Jaime Billedo, SPO1 Roberto Cariño guilty of Serious Neglect of Duty and orders their dismissal from the police

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[3] *Id*. at 32-33.

[4] *Id*. at 34-39.

service; P/INSP John Mamauag and SPO2 Eugene Almario guilty of Less Serious Neglect of Duty and orders that both of them be suspended from the police service for Ninety (90) days with forfeiture of pay; and SPO4 Erlinda Garcia and SPO1 Vivian Felipe exonerated of the charge for insufficiency of evidence.

SO ORDERED.

Still not satisfied, petitioner filed a Motion for Partial Reconsideration of the foregoing decision. In a Resolution[5] dated July 3, 1997, the PNP Chief modified his previous ruling and ordered the dismissal from service of respondents Mamauag, Almario, Garcia and Felipe.

Respondents filed a petition for *certiorari* and *mandamus* against the PNP Chief, the PNP Inspector General and petitioner before the Quezon City Regional Trial Court, Branch 101. However, in an Order dated November 25, 1997, the trial court dismissed the petition for failure to exhaust administrative remedies.

Thereafter, respondents sought appellate recourse before the National Police Commission, NAB but in the decision[6] dated March 3, 2000, the appeal was dismissed for having been filed late. Subsequent motion for reconsideration was likewise denied on June 30, 2000.

Unperturbed, respondents elevated the matter to the CA by way of petition for review under Rule 43 of the Rules of Court. On September 6, 2001, the CA rendered the herein challenged Decision. The decretal portion of which reads:

WHEREFORE, in view of the foregoing, the Resolution of the PNP Chief Recaredo Sarmiento II dated 3 July 1997, having been rendered in excess of his jurisdiction is hereby **SET ASIDE** for being null and void. Accordingly, the **DECISION** and **RESOLUTION** made by the National Appellate Board dated 3 March 2000 and 30 June 2000, respectively, are also **SET ASIDE** for being null and void.

SO ORDERED.

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

[6] *Id*. at 45-48.

Aggrieved, petitioner is now before the Court *via* the present recourse raising the following issues:

1. Whether Sections 43[7] and 45[8] of Republic Act No. (RA) 6975[9] allow the filing of a motion for reconsideration;

2. Whether the PNP Chief could modify his June 7, 1996 decision and issue another with a higher penalty of dismissal from service; and

3. Whether petitioner as private complainant in the administrative case has the legal personality to move for reconsideration, or appeal an adverse decision of the disciplining authority.

At the outset, the Court notes that the issues raised by petitioner had already been settled by the Court in a kindred case, *The National Appellate Board (NAB) of the National Police Commission (NAPOLCOM) v. P/INSP John A. Mamauag, et al.*[10]

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[7] SEC. 43. *People's Law Enforcement Board (PLEB).*— x x x

(e) *Decisions.* — The decision of the PLEB shall become final and executory: *Provided,* That a decision involving demotion or dismissal from the service may be appealed by either party with the regional appellate board within ten (10) days from receipt of the copy of the decision.

[8] SEC. 45. *Finality of Disciplinary Action.* — The disciplinary action imposed upon a member of the PNP shall be final and executory: *Provided,* That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: *Provided, further,* That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof: *Provided, furthermore,* The regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: *Provided, finally,* That failure of the regional appellate board to act on the appeal within said period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary.

[9] An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and For Other Purposes.

[10] G.R. No. 149999, August 12, 2005, 466 SCRA 624, 641.

docketed as G.R. No. 149999. In the said case, the Court through its First Division ruled that RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Explains the Court in said decision:

> RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.
>
> However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared:
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> > To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."
> >
> > In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.
>
> In any event, a private complainant like Judge Angeles is not one of "either party" who can appeal under Sections 43 and 45 of RA 6975. The private complainant is a mere witness of the government which is the real party in interest. In short, private complainant Judge

Angeles is not a party under Sections 43 and 45 who can appeal the decision of the disciplining authority.

Thus, Judge Angeles has no legal personality to appeal the dismissal of the charges against Mamauag, *et al.* by the CPDC District Director in the Resolution of 10 April 1995. The motion for re-investigation filed by Judge Angeles with the PNP Chief is in substance an appeal from the decision of the CPDC District Director. The PNP Chief had no jurisdiction to entertain Judge Angeles' appeal in the guise of a motion for re-investigation. Since the PNP Chief had no jurisdiction, all actions taken by the PNP Chief pursuant to the appeal is void. Thus, the Decision of the CPDC District Director dismissing the charges against Mamauag, *et al.* stands and is now final and executory.

Accordingly, the Court disposed G.R. No. 149999 as follows:

WHEREFORE, we DENY the instant petition. We AFFIRM the Decision of the Court of Appeals promulgated on 06 September 2001 in CA-G.R. SP No. 61711 with MODIFICATION. We REVERSE the 3 July 1997 Resolution of PNP Chief Recaredo Sarmiento II and REINSTATE the Resolution of 10 April 1995 of the CPDC District Director dismissing the charges against P/Insp. John A. Mamauag, SPO2 Eugene Almario, SPO4 Erlinda Garcia, and SPO1 Vivian Felipe, who are all entitled to back salaries and other benefits as provided under Section 48 of Republic Act No. 6975.

SO ORDERED.

The Court sees no reason to depart from the foregoing decision. Hence, the instant petition must likewise be disposed in same manner.

To recapitulate, the PNP Chief had no jurisdiction to entertain petitioner's appeal in the guise of a motion for re-investigation. Since the PNP Chief had no jurisdiction, all actions taken by him pursuant to the appeal is void. Thus, the April 10, 1995 resolution of the CPDC District Director, dismissing the charges against respondents, stands and is now final and executory.

WHEREFORE, the instant petition is *DENIED* and the assailed decision and resolution of the CA are *AFFIRMED* with *MODIFICATION*. The June 7, 1996 decision and July 3, 1997 Resolution of the PNP Chief are hereby *REVERSED* and *SET*

FIRST DIVISION

[G.R. No. 160541. October 24, 2008]

RONELO POLO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHEN THE TRIAL COURT'S FACTUAL FINDINGS ARE AFFIRMED BY THE COURT OF APPEALS, SUCH FINDINGS ARE GENERALLY CONCLUSIVE AND BINDING UPON THE COURT. — We find the petition without merit. When the trial court's factual findings are affirmed by the Court of Appeals, such findings are generally conclusive and binding upon the Court. The Court of Appeals was correct in not appreciating the mitigating circumstance of sufficient provocation in Polo's favor. In this case, there was no showing that Balisoro provoked Polo. If there was indeed provocation from Balisoro to merit the attack, it was not adequate to excite Polo to commit a wrong, which must be proportionate in gravity. Also, a sufficient interval of time had already elapsed giving Polo time to regain his reason and exercise self-control.

2. CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ABSENT IN CASE AT BAR. — As to the mitigating circumstance of voluntary surrender, we agree with the Court of Appeals that between Polo's self-serving testimony and the duly served warrant of arrest, the latter deserves more credence. If Polo surrendered to policeman Pantua on 23 October 1994, then the MTC should not have issued a warrant of arrest on 27 October 1994. Where the accused surrendered only after the warrant of arrest was served on him, it cannot be considered as voluntary surrender.

3. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; TO SEEK RECOVERY OF ACTUAL DAMAGES, IT IS NECESSARY TO PROVE THE ACTUAL AMOUNT OF LOSS WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF AND ON THE BEST EVIDENCE OBTAINABLE. — However, we delete the award

of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable. In this case, the prosecution presented receipts amounting to only ₱12,026.60. However, in accordance with *People v. Villanueva*, we award ₱25,000 as temperate damages in lieu of the actual damages of a lesser amount.

4. ID.; ID.; AWARD OF LOSS OF EARNING CAPACITY; ABSENCE OF DOCUMENTARY EVIDENCE TO SUBSTANTIATE THE CLAIM FOR THE LOSS WILL NOT PRECLUDE RECOVERY OF SUCH LOSS; PROPER IN CASE AT BAR. — The trial court and the Court of Appeals also overlooked the award of loss of earning capacity despite the testimony of Avelina Balisoro (Avelina) on her husband's income. The absence of documentary evidence to substantiate the claim for the loss will not preclude recovery of such loss. Avelina testified that her husband earned ₱6,400 a year from stripping abaca and ₱18,000 a year from planting rice. The defense did not object to Avelina's testimony on her husband's earning capacity. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. It was also established that at the time of his death, Balisoro was 31 years old.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO,[*] *J.*:

This is a petition for review[1] of the 16 June 2003 Decision[2] and 12 September 2003 Resolution of the Court of Appeals in

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

[2] Penned by Associate Justice Romeo A. Brawner with Associate Justices Eliezer R. de los Santos and Regalado E. Maambong, concurring.

[*] Acting Chairperson of the First Division as Per Special Order No. 527.

CA-G.R. CR No. 25163. The 16 June 2003 Decision affirmed *in toto* the 4 October 2000 Decision of the Regional Trial Court, Branch 55, Irosin, Sorsogon (trial court), finding petitioner Ronelo Polo (Polo) guilty beyond reasonable doubt of homicide and sentencing him to suffer an indeterminate penalty of 10 years and 1 day of *prision mayor* maximum, as minimum, to 17 years and 4 months of *reclusion temporal* medium, as maximum. The Court of Appeals also affirmed the trial court's order for Polo to pay the heirs of the victim Danilo Balisoro (Balisoro) ₱30,000 as actual damages, ₱50,000 as indemnity for death, ₱50,000 as moral damages and to pay the costs. The 12 September 2003 Resolution denied Polo's motion for reconsideration.

On 27 February 1995, Polo was charged with the murder of Balisoro.

Polo pleaded not guilty upon arraignment.

During the trial, prosecution witnesses Chito Leander and Dante Encinares testified that they were on their way home from the dance hall when Polo called Balisoro. They all stopped and Polo ran toward their group with his hands on his back. When Polo was near enough, Polo had a short conversation with Balisoro. Suddenly, Polo hacked Balisoro on the head. Balisoro was brought to the hospital but he later died due to the head injuries he sustained.

Polo admitted hacking Balisoro with a bolo but claimed to have done it in self-defense. Polo said that he witnessed an altercation between Balisoro and his cousin, Romeo Hispano (Romeo), and that he was just trying to help Romeo. Then Roberto Caña came running toward Polo carrying a bladed weapon and Balisoro boxed him twice, hitting him on the cheeks. Polo said that Balisoro pulled out a knife and was about to stab him, but he escaped and ran to his house. Polo said that he got hold of "something," which he later learned was a *balisong*, and he used it to strike Balisoro. Polo then fled the scene of the crime and met Kagawad Alfredo Cielo who accompanied him when he surrendered to a certain policeman Pantua.

Defense witness Ronaldo Hispano (Ronaldo) said he was the one who witnessed the altercation between his brother Romeo and Balisoro. Ronaldo told Polo of the incident and Polo went after Balisoro to confront him. Ronaldo said that Polo hacked Balisoro because Balisoro was about to stab Polo.

Arlan Ete, another defense witness, corroborated Polo's testimony that Balisoro boxed Polo twice and even attempted to stab him.

The trial court found the testimonies of the prosecution witnesses candid, straightforward and consistent while those of the defense witnesses were declared to be full of inconsistencies. The trial court ruled that Polo's claim of self-defense did not have factual basis and that Polo failed to prove that there was unlawful aggression on the part of Balisoro. However, the trial court did not appreciate the qualifying circumstances of treachery and evident premeditation because the prosecution failed to establish them with reasonable certainty. The trial court also did not appreciate the mitigating circumstance of voluntary surrender because the records showed that on 27 October 1994, the Municipal Trial Court of Irosin (MTC) issued a warrant of arrest[3] and that it was "duly served."

On 4 October 2000, the trial court rendered its decision, finding Polo guilty of homicide under Article 249 of the Revised Penal Code.

Polo appealed to the Court of Appeals. Polo asked the Court of Appeals to appreciate in his favor the mitigating circumstances of voluntary surrender and sufficient provocation on the part of the offended party immediately preceding the act.

In its 16 June 2003 Decision, the Court of Appeals denied Polo's appeal and affirmed *in toto* the trial court's decision. The Court of Appeals agreed with the trial court that the prosecution's version was more credible than that of the defense, which was full of inconsistencies and was tailor-made to suit Polo's claim. The Court of Appeals said Polo failed to show

[3] Records, p. 7.

that there was sufficient provocation from Balisoro to excite Polo to commit the crime. The Court of Appeals also found Polo's testimony as to the circumstance of his voluntary surrender unclear. The Court of Appeals agreed with the trial court that the duly served warrant of arrest belied Polo's claim of voluntary surrender.

In its 12 September 2003 Resolution, the Court of Appeals denied Polo's motion for reconsideration.

Hence, this petition.

We find the petition without merit. When the trial court's factual findings are affirmed by the Court of Appeals, such findings are generally conclusive and binding upon the Court.[4] The Court of Appeals was correct in not appreciating the mitigating circumstance of sufficient provocation in Polo's favor. In this case, there was no showing that Balisoro provoked Polo. If there was indeed provocation from Balisoro to merit the attack, it was not adequate to excite Polo to commit a wrong, which must be proportionate in gravity. Also, a sufficient interval of time had already elapsed giving Polo time to regain his reason and exercise self-control.

As to the mitigating circumstance of voluntary surrender, we agree with the Court of Appeals that between Polo's self-serving testimony and the duly served warrant of arrest, the latter deserves more credence. If Polo surrendered to policeman Pantua on 23 October 1994, then the MTC should not have issued a warrant of arrest on 27 October 1994. Where the accused surrendered only after the warrant of arrest was served on him, it cannot be considered as voluntary surrender.

However, we delete the award of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[5] In this case, the prosecution presented receipts amounting to

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[4] *Danofrata v. People*, 458 Phil. 1018 (2003).

[5] *People v. Tigle*, 465 Phil. 368 (2004).

only ₱12,026.60.[6] However, in accordance with *People v. Villanueva*,[7] we award ₱25,000 as temperate damages in lieu of the actual damages of a lesser amount.

The trial court and the Court of Appeals also overlooked the award of loss of earning capacity despite the testimony of Avelina Balisoro (Avelina) on her husband's income. The absence of documentary evidence to substantiate the claim for the loss will not preclude recovery of such loss.[8] Avelina testified that her husband earned ₱6,400[9] a year from stripping abaca and ₱18,000[10] a year from planting rice. The defense did not object to Avelina's testimony on her husband's earning capacity. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[11] It was also established that at the time of his death, Balisoro was 31 years old.[12] Loss of earning capacity is computed based on the following formula:

Net Earning Capacity	= Life Expectancy [2/3 (80-age at death)]	x Gross Annual Income (GAI)	– Living Expenses (50% of GAI)
	= $\frac{2\ (80-31)}{3}$	x GAI	– [50% of GAI]
	= $\frac{2\ (49)}{3}$	x ₱24,400	– ₱12,200
	= $\frac{98}{3}$	x ₱12,200	
	= 32.67	x ₱12,200	

Net Earning Capacity = ₱398,574

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[6] Exhibits "B" to "B-34", records, p. 114.

[7] 456 Phil. 14 (2003).

[8] *People v. Tigle, supra*.

[9] Avelina testified that her husband earned ₱800 a week for stripping abaca, which Balisoro undertook for eight weeks in a year.

[10] Avelina testified that her husband was paid 30 sacks of rice per harvest and that there are two harvest periods in a year. Avelina also said that a sack of rice was valued at ₱300.

[11] *People v. Tigle, supra*.

[12] Records, p. 18.

ASIDE and the Resolution of April 10, 1995 of the CPDC District Director dismissing the charges against respondents P/Insp. John A. Mamauag, SPO2 Eugene Almario, SPO4 Erlinda Garcia, and SPO1 Vivian Felipe is *REINSTATED*. Respondents are all entitled to back salaries and other benefits as provided under Section 48 of Republic Act No. 6975.

Costs against the petitioner.

SO ORDERED.

Carpio,[*] *Corona, Azcuna,* and *Brion,*[**] *JJ.,* concur.

Puno, C.J., on official leave.

FIRST DIVISION

[G.R. No. 156850. October 24, 2008]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **PERICO V. JAO, representing the estate of the late Spouses ANDREA and IGNACIO JAO TAYAG,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; A FINAL AND EXECUTORY ORDER CAN NO LONGER BE DISTURBED NO MATTER HOW ERRONEOUS IT MAY BE; ANY JUDICIAL ERROR SHOULD BE CORRECTED THROUGH AN APPEAL AND NOT THROUGH REPEATED SUITS ON THE SAME CLAIM. — A final and

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[*] Acting Chairperson of the First Division as per Special Order No. 527.

[**] Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 528.

executory order can no longer be disturbed no matter how erroneous it may be. Any judicial error should be corrected through an appeal and not through repeated suits on the same claim. If the Court would rule that the amount of damages recoverable by Jao was limited to the ₱66,400 deposit, it would, in effect, be amending the final and executory order of the trial court. The Court cannot do that.

APPEARANCES OF COUNSEL

Legal Department (NHA) for petitioner.
Jorge Roito S. Hirang for respondent.

R E S O L U T I O N

CARPIO,[*] *J.*:

The Case

This is a petition for review[1] of the 16 July 2002 Decision[2] and 10 January 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 66408.

The Facts

On 28 July 1982, the National Housing Authority (NHA) filed with the Regional Trial Court, National Capital Judicial Region, Manila, Branch 28, a case for expropriation against the property of Ignacio and Andrea Jao Tayag (Spouses Jao Tayag) located on Juan Luna Street, Tondo, Manila. The property measured 1,660.60 square meters and was covered by Transfer

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[*] Acting Chairperson of the First Division as Per Special Order No. 527.

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

[2] *Rollo*, pp. 23-30. Penned by Associate Justice Candido V. Rivera with Associate Justices Delilah Vidallon-Magtolis and Sergio Pestaño, concurring.

[3] *Id*. at 31-33. Penned by Associate Justice Candido V. Rivera with Associate Justices Delilah Vidallon-Magtolis and Juan Q. Enriquez, Jr., concurring.

Certificate of Title (TCT) No. 95355. The NHA deposited ₱66,400 with the Philippine National Bank (PNB).

On 29 December 1982, the trial court issued a writ of possession, control, and disposition in favor of the NHA and, on 10 March 1983, the NHA took possession of the property. On 30 March 1984, the trial court upheld the NHA's right to expropriate the property. According to the NHA, the trial court set the amount of just compensation at ₱66,400.[4] TCT No. 95355 was canceled and a new one in the name of the NHA was issued.

For more than 15 years, the NHA abandoned the property and failed to pay the Spouses Jao Tayag just compensation. The NHA failed to develop or utilize the property for any public purpose and left it to deteriorate. Squatters occupied and destroyed the improvements on the property.

On 20 May 1997, Perico V. Jao (Jao), representing the estate of the Spouses Jao Tayag, filed with the trial court a case for recovery of possession and damages against the NHA. In its 4 September 1998 Order,[5] the trial court ruled in favor of Jao. The trial court held and ordered that:

1. **The defendant NHA** from March 10, 1983 when actual possession of subject lot was transferred to it by Sheriff Mangahas of the City Sheriff of Manila to the present or a period of fourteen (14) years, **has not devoted the same to any kind of public purpose or use**; on the contrary it is now occupied by squatters[;]

2. **There has been no actual payment of just compensation** to the plaintiffs landowners; the mere deposit with the [Philippine National Bank] Heart Center Branch of the amount of [₱66,400.00] could not legally be considered payment, it is the job and responsibility of the defendant NHA to effect and facilitate payment by initiating a case for the settlement of the estate of the deceased Ignacio Jao Tayag[;]

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[4] *Id*. at 9 and 93-94.

[5] *Id*. at 34-37.

3. x x x x x x x x x

4. **The Plaintiffs obviously suffered damages** by reason of their dispossession from subject lot without any concrete moves on the part of NHA to develop the same for any public purpose; **ten thousand** [**pesos (₱10,000.00)**] **a month to compensate for the deprivation of the occupancy and use thereof from March 1983 up to the present is reasonable**[;]

5. Not having paid the just compensation for subject lot and not having devoted the same for any kind of public use for the last fifteen (15) years, **defendant NHA should reconvey the same to the plaintiff**.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. **Declaring and finding that defendant NHA has utterly failed to comply with the provisions of our Constitution and Article 435 of the Civil Code on Eminent Domain in the expropriation of subject lot**, that is, **there was taking but there was no payment of just compensation of subject lot until the present; NHA has not also devoted the subject lot for any kind of public use or purpose during the last fifteen years**.

2. **Ordering NHA to reconvey subject lot to the plaintiff**.

3. **Ordering the defendants to pay the plaintiff the sum of ten thousand** [**pesos (₱10,000.00)**] **a month for the loss of possession and use of the subject property and the further sum of five hundred thousand** [**pesos (₱500,000.00)**] **as damages to the destroyed improvements thereon with legal interest, until the property is restored to the plaintiffs**.

4. **Ordering defendant NHA to pay plaintiff the sum of twenty thousand pesos (₱20,000.00) for attorney's fees and costs of suit**. (Emphasis supplied)

On 11 November 1998, the NHA filed a motion for reconsideration of the 4 September 1998 Order. In its 10 May 1999 Order,[6] the trial court denied the motion for reconsideration.

[6] *Id*. at 38.

The trial court held that, "Sadly and regretably, until today, defendant [NHA's] socialized housing project envisioned for subject lot is still a dreamer's dream and only heaven knows when this dream becomes a reality."

On 7 June 1999, the NHA appealed to the Court of Appeals. In a Resolution dated 11 February 2000, the Court of Appeals dismissed the appeal for failure to pay the docket and other lawful fees. On 9 March 2000, the 11 February 2000 Resolution became final and executory. The Entry of Judgment[7] dated 9 March 2000 stated:

> This is to certify that on February 11, 2000 a decision/resolution rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:
>
> "WHEREFORE, in view of the foregoing, the motion for reconsideration filed by plaintiff-appellee, is hereby GRANTED and accordingly, our Resolution of November 8, 1999 allowing defendants-appellants to pay the required docket fees hereby recalled and set aside and the instant appeal ordered DISMISSED.
>
> SO ORDERED."
>
> and that **the same has, on March 9, 2000 become final and executory** and is hereby recorded in the Book of Entries of Judgments. (Emphasis supplied)

On 12 April 2000, Jao filed a motion for the issuance of a writ of execution.[8] In the writ of execution dated 29 June 2000, the trial court commanded Sheriff Benjamin E. Garvida (Sheriff Garvida) to cause the NHA to (1) reconvey the property; (2) pay ₱10,000 for every month that Jao was deprived of possession and use of the property; (3) pay ₱500,000 for the damages to the improvements on the property, with 6% annual interest; (4) pay ₱20,000 attorney's fees and costs of suit, and (5) pay the legal fees for the execution of judgment. Sheriff Garvida furnished the PNB a notice of garnishment against the ₱66,400 deposit.

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[7] *Id*. at 39.

[8] CA *rollo*, pp. 56-57.

On 31 July 2000, the NHA filed a motion to quash the writ of execution and notice of garnishment.[9] The NHA alleged that the writ was unlawful because all damages suffered by Jao should be answered by, and limited to, the ₱66,400 deposit.

The Regional Trial Court's Ruling

In its Order[10] dated 14 September 2000, the trial court denied the motion to quash the writ of execution and notice of garnishment. The trial court held that:

> Rule 67, Section 11 of the Rules of Court provides, x x x, "*But if the appellate court determines that the plaintiff has no right of expropriation, judgment shall be rendered ordering the Regional Trial Court to forthwith enforce the restoration to the defendant of the possession of the property and to determine the damages which the defendant sustained and may recover by reason of the possession taken by the plaintiff.*" This provision applies to the instant case as **the annulment of the expropriation proceedings as found by this court is tantamount to a finding that the NHA has no right of condemnation, ergo, damages can be recovered. And, speaking of damages, the aforequoted provision of law does not provide for a limitation**. In the same wise, **the Court in *Visayan vs. Camus*, *supra*, has no mention that the amount of damages recoverable is limited only to the amount of the preliminary deposit**. Among others, the Court in the said case ruled that, "*In the eventuality that the expropriation shall not be consummated, the owners will be protected by the deposit from any danger of loss resulting from the temporary occupation of the land by the government, for it is obvious that this preliminary deposit serves the double purpose of a prepayment upon the value of the property, if finally expropriated and as an indemnity against damages in the eventuality that the proceedings should fail of consummation.*" Indubitably, the pronouncement does not meant [sic] to be a limitation on the amount of damages recoverable, but, that the preliminary deposit serves as protection and security for the property owner.
>
> Further, in *Metropolitan Water District vs. Sixto de los Angeles*, 55 Phil. 783, where the government petitioned for the dismissal of

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[9] *Id*. at 61-63.

[10] *Id*. at 15-17.

the expropriation proceedings after the case has been appealed to the Court of Appeals by both the government and the owners of the properties and after a considerable period of time, the Court observed and paused [sic] a question, "Should not the plaintiff for causing damage to the defendants be required under the facts in the present case to answer for all the damages occasioned to the defendants? That question must certainly be answered in the affirmative." The court resolved.

The Court likewise ruled, "*That whether the question of the determination of damages be in this or a separate action, the lower court should take into consideration, for the purpose of determining the amount of damages, the following: (1) The loss resulting from the dispossession of the land; (2) The loss resulting from the deprivation of the use and occupation of the land; (3) The expenses incurred during the pendency of this action, including attorney's fees, etc.; (4) The destruction of buildings, canals and growing crops at the time of the occupation of the land by the petitioner; and (5) All of the damages of whatever kind or character which the defendant may be able to prove and which have been occasioned by virtue of the institution of the present action*."

Again, in this case, the Court enumerated the guidelines in determining the amount of damages. And, clearly, **there is no occasion that the Court has limited the liability recoverable only to a certain amount**. In the light of the foregoing, the instant motion is hereby DENIED for lack of merit.[11] (Emphasis supplied)

The NHA filed a motion for reconsideration of the 14 September 2000 Order. In its Order[12] dated 28 June 2001, the trial court denied the motion. On 31 August 2001, the NHA filed a petition for *certiorari*[13] with the Court of Appeals praying that the 14 September 2000 and 28 June 2001 Orders be set aside. The NHA alleged that the trial court committed grave abuse of discretion in issuing the writ of execution because all damages suffered by Jao should be answered by, and limited to, the ₱66,400 deposit.

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[11] *Id.* at 16-17.

[12] *Id.* at 13-14.

[13] Under Rule 65 of the Rules of Court.

The Court of Appeals' Ruling

In its Decision[14] dated 16 July 2002, the Court of Appeals dismissed the petition. The Court of Appeals held that:

> Foremost, **this petition in essence takes the form of an appeal on the original decision that adjudged NHA's liability in excess of the initial deposit of the just compensation. However, we cannot allow petitioner to attack anew the merits of this case after it has long attained finality and is already executory**. Worthy to point out is the fact that the subject of this petition is just the order denying the motion to quash writ of execution and notice of garnishment, which are the corollary consequences of the finality of the original case for recovery of possession of property. When herein petitioner failed to further advance its case, the same has [sic] attained finality as evidenced by the entry of judgment in this Court dated March 9, 2000 (***Ibid*. page 36**). Hence, at this juncture, we cannot permit another glance at the merits of this case without transgressing settled rule and jurisprudence.
>
> x x x x x x x x x
>
> **The respondent judge has not committed a grave abuse of discretion amounting to lack or excess of jurisdiction correctible [sic] by *certiorari*. In fact there was no discretion allowed in the circumstance obtaining in this case. It must be recalled that the subject of the writ of execution sought to be quashed by herein petitioner is already final and executory**.[15] (Emphasis supplied)

The NHA filed a motion for reconsideration of the 16 July 2002 Decision. In a Resolution[16] dated 10 January 2003, the Court of Appeals denied the motion. Hence, this petition. The NHA alleged that the Court of Appeals erred in holding that the petition took the form of an appeal and that the trial court did not commit grave abuse of discretion.

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[14] *Rollo*, pp. 23-30.

[15] *Id*. at 28-29.

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

The Court's Ruling

The petition is unmeritorious.

In its 4 September 1998 Order, the trial court categorically (1) held that the NHA failed to pay the just compensation; (2) held that Jao suffered damages; (3) held that the NHA failed to utilize the property for any public use or purpose; (4) ordered the NHA to reconvey the property; (5) ordered the NHA to pay ₱10,000 for every month that Jao was deprived of possession and use of the property; (6) ordered the NHA to pay ₱500,000 for the damages to the improvements on the property, with 6% annual interest; and (7) ordered the NHA to pay ₱20,000 attorney's fees and costs of suit. The trial court's 4 September 1998 Order became final and executory on 9 March 2000 when the Court of Appeals' 11 February 2000 Resolution dismissing the NHA's appeal became final. The Court of Appeals made an Entry of Judgment on 9 March 2000.

A final and executory order can no longer be disturbed no matter how erroneous it may be. Any judicial error should be corrected through an appeal and not through repeated suits on the same claim.[17] If the Court would rule that the amount of damages recoverable by Jao was limited to the ₱66,400 deposit, it would, in effect, be amending the final and executory order of the trial court. The Court cannot do that.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 16 July 2002 Decision and 10 January 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 66408.

SO ORDERED.

Corona, Azcuna, Leonardo-de Castro, and *Brion,*[**] *JJ.*, concur.

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[17] *NHA v. Heirs of Guivelondo,* 452 Phil. 481, 493 (2003).

[**] As replacement of Chief Justice Reynato S. Puno who is on official leave per Special Order No. 528.

WHEREFORE, we *DENY* the petition and *AFFIRM* the 16 June 2003 Decision and 12 September 2003 Resolution of the Court of Appeals in CA-G.R. CR No. 25163 finding Ronelo Polo guilty beyond reasonable doubt of homicide with the *MODIFICATION* that Ronelo Polo is ordered to pay the heirs of Danilo Balisoro as follows: ₱25,000 for temperate damages and ₱398,574 for loss of earning capacity. We *DELETE* the award of actual damages.

SO ORDERED.

Corona, Azcuna, Leonardo-de Castro, and *Brion,*[**] *JJ.,* concur.

EN BANC

[G.R. No. 171008. October 24, 2008]

CARMELITA FUDOT, *petitioner, vs.* **CATTLEYA LAND, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DEFINED. — Contempt is defined as a disobedience to the Court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct that tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.

2. ID.; ID.; ID.; INDIRECT CONTEMPT; WHEN COMMITTED. — Indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct

[**] As replacement of Chief Justice Reynato S. Puno who is on official leave per Special Order No. 528.

or embarrass the court and justice. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice has also been considered to constitute indirect contempt.

3. ID.; EVIDENCE; AN ACCUSATION OF BRIBERY IS EASY TO CONCOCT AND DIFFICULT TO DISPROVE, THE COMPLAINANT MUST PRESENT PANOPLY OF EVIDENCE IN SUPPORT OF SUCH AN ACCUSATION. — An accusation of bribery is easy to concoct and difficult to disprove, the complainant must present panoply of evidence in support of such an accusation. It will take more than the uncorroborated and independent statements of Atty. De La Serna to cast an aura of credibility to his accusations.

4. LEGAL ETHICS; ATTORNEYS; DUTIES OF A LAWYER AS AN OFFICER OF THE COURT; CITED. — A lawyer is, first and foremost, an officer of the court. Corollary to his duty to observe and maintain the respect due to the courts and judicial officers is to support the courts against "unjust criticism and clamor." His duty is to uphold the dignity and the authority of the courts to which he owes fidelity, "not to promote distrust in the administration of justice, as it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice." As we held in one case: It is [the] respondent's duty as an officer of the court, to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; PENALTY; CASE AT BAR. — Atty. De La Serna has transcended the permissible bounds of fair comment and criticism. His irresponsible and baseless statements, his unrepentant stance and smug insistence of his malicious and unfounded accusation against Justice Tinga have sullied the dignity and authority of this Court. Beyond question, therefore, De La Serna's culpability for indirect contempt warrants the penalty of a fine not exceeding ₱30,000.00 or imprisonment not exceeding six (6) months or both under the Rules.

6. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER TO DECLARE A PERSON IN CONTEMPT OF COURT; RATIONALE. — The power to declare a person in contempt of court and in dealing with him accordingly is a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein and the administration of justice from callous misbehavior and offensive personalities. Respect for the courts guarantees the stability of the judicial institution. Without such guarantee, the institution would be resting on a very shaky foundation. The Court will not hesitate to wield this inherent power to preserve its honor and dignity and safeguard the morals and ethics of the legal profession.

APPEARANCES OF COUNSEL

Victor De La Serna for petitioner.
Monteclar Sibi and Trinidad Law Offices for respondent.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is the charge of indirect contempt initiated *motu proprio*[1] by the Court against Atty. Victor De La Serna.[2]

On 9 November 2007, the Court received from De La Serna a request for the inhibition of Associate Justice Dante O. Tinga,[3]

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[1] Pursuant to the RULES OF COURT, Rule 71, Sec. 4. *How proceedings commenced*. — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

[2] On 13 September 2007, the Court promulgated its decision in this case, denying the petition filed by Carmelita Fudot. Petitioner's Motion for Reconsideration dated 20 October 2007 was denied on 6 February 2008. The decision became final and executory on 4 March 2008.

[3] *Request for the Inhibition of Justice Dante O. Tinga on the Ground of Credible Allegations of Bribery of ₱10 Million* dated 4 November 2007; *rollo*, pp. 117-126.

claiming that Justice Tinga received ₱10 Million from Mr. Johnny Chan (Mr. Chan) in exchange for a favorable decision in the instant case.[4] He alleges:

> After the usual exchange of civilities, **JOHNNY CHAN** curtly told the undersigned that all negotiations for the purchase of petitioner's rights between us were off. He further stated that he had already given out **TEN MILLION PESOS to JUSTICE DANTE O. TINGA** in exchange for a favorable Decision in this case. Hence, there is no more reason for him to talk to us. Justice Dante O. Tinga is the ***ponente*** of the Decision subject to [sic] this Motion for Reconsideration.[5]

Atty. De La Serna relates that sometime in 2006, he was prevailed upon by former BIR Commissioner Tomas Toledo to meet with Mr. Chan. In the meeting, Mr. Chan informed him that he had already bought the interest of Cattleya Land, Inc. (Cattleya) over a property adjacent to the property subject of the case and that he was interested in putting up a resort/hotel in the property. He wanted to purchase Carmelita Fudot's interest in the property as well to put an end to the litigation. They did not reach an agreement on the purchase price.[6]

Another meeting was set, this time, through the intercession of Atty. Dionisio De La Serna, former Secretary of the Housing and Land Use Regulatory Board, and upon the request of Mr. Chan's lawyer, Atty. Paulino Petralba (Atty. Petralba). In this meeting, Atty. Petralba offered ₱4 Million. Again, no agreement was reached on the purchase price, De La Serna narrates.[7]

Sometime in August 2007, Atty. Petralba sought out Atty. De La Serna's son, Atty. Victor De La Serna, Jr., and informed him that the Supreme Court's decision in the instant case was forthcoming.[8]

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[4] De La Serna refers to our 13 September 2007 decision wherein we upheld the title of Cattleya, Land, Inc. over that of Fudot, Atty. De La Serna's client.

[5] *Rollo,* p. 121.

[6] *Id.* at 119.

[7] *Id.* at 120.

[8] *Id.*

This advance knowledge of the decision only confirms the bribery bragged about by Mr. Chan, De La Serna claims.[9]

In another meeting on 26 September 2007, Mr. Chan told Atty. De La Serna that there would be no more negotiations for the purchase of Fudot's rights and he had already given ₱10 Million to Justice Tinga. By way of *consuelo de bobo,* Mr. Chan offered De La Serna a legal retainer of ₱200,000.00 down and a monthly fee of ₱15,000.00 to act as his lawyer in Bohol.[10] A day later, or on 27 September 2007, as De La Serna notes, in a bid to tie the loose ends of his tale, the decision in this case was mailed at the Central Post Office,[11] a copy of which was received by him on 10 October 2007.

Atty. De La Serna adds:

ALL WE NEED TO HAVE IS A LITTLE COMMON SENSE TO CONCLUDE THAT INDEED, THE FAVORABLE DECISION OF THIS HONORABLE COURT WAS OBTAINED THRU BRIBERY. This is what JOHNNY CHAN was bragging and this is what happened.[12] (Emphasis supplied)

Atty. De La Serna insists that the decision was contrary to the principles enunciated by Justice Tinga in the case of *Lim v. Jorge*.[13] He states:

III. THE DECISION OF JUSTICE TINGA IN THE CASE REEKS OF BRIBERY. HE HAS REPUDIATED ALL THE DOCTRINES HE HAS SUMMARIZED AND ENUNCIATED IN *LIM v. JORGE*, A DECISION HE PENNED ONLY IN 2005.

Only two years ago, in *Lim v. Jorge*, (G.R. No. 161861, March 11, 2005) **Justice Dante Tinga** made a learned treatise when he summarized and further expounded on all the long-established

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[9] *Id.* at 121.

[10] *Id.*

[11] *Id.* at 65.

[12] *Id.* at 123.

[13] G.R. No. 161861, March 11, 2005.

doctrines on the law and jurisprudence governing the Torrens System of land titles in the Philippines. It was indeed a brilliant anthology worthy of publication into a book.

In this instant Decision however, Justice Tinga has swallowed all the noble doctrines he has enunciated so brilliantly, and instead repudiated and contradicted everything he has said **just to accommodate JOHNNY CHAN and all his cohorts and his money.**

x x x x x x x x x

If this is not a **CLEAR CASE OF BRIBERY**, then we don't know what is.

The Decision of Justice Tinga in this case is simply a **ROGUE DECISION**. It is **illegal**. It is **immoral.** And **like a "mad dog**, it **should be slain at sight**."[14] (Emphasis supplied)

Atty. De La Serna also finds it surprising that the instant case was decided less than two (2) years after it was submitted for resolution. He compares the instant case to a criminal case which has been pending for ten (10) years before the Court.[15] He states:

Yet, in this instant case, **TWO (2) YEARS** is all it took for Justice Dante Tinga to come up with a favorable Decision for **JOHNNY CHAN**.

Where is equity? Where is the justice? **IF THIS IS NOT BRIBERY, THEN THE SUN RISES EVERY MORNING FROM THE WEST.**

This case must have been plucked out from underneath a stack of older cases which have been prioritized for resolution. There could be no other explanation.

x x x x x x x x x

There is a difference of some 20,000 intervening cases between **Oppus** and **Fudot**. **WHAT COULD HAVE BEEN THE REASON WHY THIS INSTANT CASE WAS SELECTED AND PLUCKED OUT FROM UNDERNEATH 20,000 OTHER CASES, AND DECIDED IN LESS THAN TWO (2) YEARS?**

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[14] *Rollo,* pp. 123-124.

[15] *Id.* at 124-125. The case referred to is *Ignacio Oppus v. Sandiganbayan*, G.R. No. 150183.

Your Honors, **the answer** is in Your hands, but it **seems quite obvious**.[16] (Emphasis supplied)

On 6 February 2008, the Court issued a Resolution requiring Atty. De La Serna to explain in writing why he should not be punished for indirect contempt of court.[17] On 27 March 2008, De La Serna submitted his explanation, stating that he believes in utmost good faith that all the statements he made in recent pleadings he submitted in this case do not constitute "improper conduct" and that his statements "were not intended to 'impede, obstruct or degrade' the administration of justice," as they were made, on the contrary, "TO PREVENT THE COMMISSION OF A GRAVE INJUSTICE."[18]

In a resolution dated 14 April 2008, the Court set the hearing on the charge of indirect contempt on 18 June 2008.[19] In the hearing, Atty. De La Serna, together with his son Atty. Victor De La Serna, Jr., Mr. Chan, Atty. Petralba and Atty. Alex Monteclar (Atty. Monteclar) of Cattleya appeared.

Atty. De La Serna mainly reiterated his arguments during the hearing. His son, Atty. De La Serna, Jr., corroborated his statements. De La Serna, Jr. claimed that he heard Mr. Chan bragging that he spent so much for the Supreme Court; afterwards, he heard Mr. Chan mention of Justice Tinga's name and the amount of ₱10 Million,[20] only to clarify later that he did not hear Mr. Chan say for whom or which person the money was spent on.[21]

Mr. Chan informed the Court that he represents Ryan, Patrick and John (RPJ) company which owns Bellevue Hotel.[22] He

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[16] *Id.* at 125-126.

[17] *Id.* at 159-160.

[18] *Id.* at 163-164.

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

[20] *Id.* at 338, TSN dated 18 June 2008.

[21] *Id.* at 346.

[22] *Id.* at 356.

testified that RPJ bought a property from Cattleya which was adjacent to the lot subject of the case.[23] He admitted that he approached De La Serna for the purpose of amicably settling their case with Cattleya, and offered him to be their retainer in Bohol.[24] However, he denied having said to De La Serna that he had already spent so much money for the Supreme Court.[25] He added that the hearing was the first time that he saw all the justices.[26]

Mr. Chan related that during the 25 September 2007 meeting, he offered Atty. De La Serna ₱4 Million and an additional incentive — as retainer of their company.[27] In his testimony:

x x x x x x x x x

Mr. Chan:

> Well, as I said, I offered. I was trying to convince him to accept that amicable settlement and aside from that, to be my friend, maybe you can be our company retainer in Bohol. That's what we discussed about, your honor.[28]

Justice Carpio Morales:

> So, how did the conversation or that meeting end?

Mr. Chan:

> Well, we end-up, he was kind of unhappy.

Justice Carpio Morales:

> Why?

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[23] *Id.* at 359. Aside from the purchase of the adjacent property, Mr. Chan and Cattleya also entered into an "Exclusive Option to Purchase," whereby for ₱1,000,000.00, Belle South Pacific Property, Inc., represented by Johnny Chan was granted the exclusive option to buy the property subject of the case in the event that the property will be finally adjudicated to Cattleya. *Id.* at 556-558.

[24] *Id.* at 370.

[25] *Id.* at 372.

[26] *Id.* at 393.

[27] *Id.* at 363.

[28] *Id.* at 370.

Mr. Chan:

> I don't know; maybe angry.

Justice Carpio Morales:

> Why? What is your basis in saying that?

Mr. Chan.

> Because my offer to him for the amicable settlement still stands for Four Million.

Justice Carpio Morales:

> Did he counter[-]offer?

Mr. Chan:

> Well, he said Ten and I said that's too much.

Justice Carpio Morales:

> And that was it?

Mr. Chan:

> That was it.[29]

For his part, Atty. Petralba clarified that the third meeting he had with Atty. De La Serna was on 4 September 2007, and not in August as what De La Serna claimed, presenting his detailed diary for the purpose.[30] Thus:

Atty. Paulino Petralba:

> The third meeting alluded to by Atty. de la Serna was not in August, Your Honors. It was on September 4, 2007. It is recorded in my PDA and I do keep a diary where I list and narrate what happens to my life everyday. In fact, Your Honor, I have my diary here — the diary for June 2007 to December 2007, this is for last year — and I have marked September 4, 2007 and, with your indulgence, Your Honors, if I may be permitted to read even extraneous matters because that will prove something also?

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[29] *Id.* at 377-379.

[30] *Id.* at 559-560. Justice Carpio Morales, after inspecting the diary, observed that the entries found therein bear a patina of authenticity;TSN, *id.* at 455.

JUSTICE QUISUMBING:

Yes.

Justice Carpio Morales:

Yes.

Atty. Paulino Petralba:

"September 4, 2007, Tuesday, Office, 11:00 a.m.: Tennis at Makati Sports Club with my son, score 8-5, I won; Meeting with Ryan Chan, Cecil, and Atty. Vic and Junior de la Serna; He said his price is Ten Million, I offered Four Million; Home, 9:30 p.m.; I did not attend my Tuesday club," Your Honor, the third meeting was on September 4, 2007; therefore, my encounter with de la Serna, Jr. could not have happened prior to that because my encounter with him was regarding the September 25, 2000 proposed meeting between Johnny Chan and Atty. De la Serna. And may I relate, Your Honor, how that happened?[31]

Atty. Petralba claimed that his conversation with Atty. De La Serna, Jr. was a chance encounter in the tennis court, and that he did not tell Atty. De La Serna, Jr. that a decision was forthcoming. Instead, he told him that "the client wants to have another meeting *baka sakali* there will be a favorable result."[32] He maintained that he never intimated a bribery of a Supreme Court Justice.[33] In his testimony, Atty. Petralba stated:

Atty. Paulino Petralba:

I will proceed. After the third meeting in September 4, 2007 which is by the way, Your Honors, is only nine days prior to the promulgation of the case on September 13. Ahhh…my birthday is September 13, Your Honors, and I went to the tennis court on September 17, 2007 to give a blow out to my tennis buddies and I also played one game of tennis on September 17. If I may be permitted, Your Honors, may I read my entries in this diary?

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[31] *Id.* at 413-415.

[32] *Id.* at 420.

[33] *Rollo,* p. 423. TSN dated 18 June 2008.

JUSTICE QUISUMBING:

Go ahead.

Atty. Paulino Petralba:

"September 27, 1007, (sic) Monday, lunch at office; Ordoñez of tour organizers came to my office; went to GBH for meeting; from GBH returned to office, conference with another client; then went to BF tennis court, played one game and gave birthday blow out — *inom* for my group: Ernie, Glen, Roy, *etc*., *etc*.; had short chat with Junior de la Serna, 5:00 p.m." This is how it transpired, Your Honor.

JUSTICE QUISUMBING:

17 September ….

Atty. Paulino Petralba:

After my game, I sat down, had beer, then Junior de la Serna was walking out of another tennis court. He walked infront of our table and I said, "*O Junior, gusto daw makipagmeeting uli ng kliyente ko baka sakaling may* favorable result," and he said "*Aba, okay*, I'll tell my papa, my father." I said, "No, no *kasi* I'm not going to arrange it anymore because I'm on vacation and I'm going abroad." That's all that happened in that meeting, your Honor. I did not seek him out, Your Honor. It was a chance meeting.[34]

x x x x x x x x x

Pursuing a vital point, Justice Carpio inquired and Atty. Petralba answered, thus:

Justice Carpio:

Okay that was September 17, four days after the promulgation of the decision. September 13 was the date the decision was made.

Atty. Paulino Petralba:

Yes, Your Honor.

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[34] TSN, *id.* at 417-419.

Justice Carpio:

So if Mr. Chan really paid Ten Million to anyone here, Mr. Chan would have known immediately that the case was decided because he paid for it, correct?

Atty. Paulino Petralba:

Logically.

Justice Carpio:

So he would have told you to forget about paying anything we won already.

Atty. Paulino Petralba:

Logically, Your Honor.

Justice Carpio:

So your offer to meet again — your offer on September 17 to meet again — would be irrational because you won already had that money been given really.

Atty. Paulino Petralba:

Exactly, Your Honor, and in fact the meeting on September 25 would have been an absurd meeting.

Justice Carpio:

Absurd meeting because if…

Atty. Paulino Petralba: …

the case was already decided…

Justice Carpio: Yaah…

If your client really paid Ten Million, he would be the first to know right away.

Atty. Paulino Petralba:

Exactly, Your Honor.

Justice Carpio:

And on September 25, he would not have agreed to a meeting anymore.

Atty. Paulino Petralba:

Yes, Your Honor.[35]

Atty. Monteclar confirmed that Mr. Chan bought a land adjacent to the property subject of the petition, and that Mr. Chan, interested in buying the property of Fudot, told them that he would try to expedite the matter and talk to De La Serna.[36] He mentioned that he and his client, Cattleya, refused to negotiate with De La Serna because they had a sad experience with him when he accused one of Cattleya's lawyers of making Cattleya a milking cow. Said lawyer even filed an administrative case against De La Serna for making baseless accusations and using intemperate language against opposing lawyers in his pleadings in this very case when it was still before the trial court.[37] Atty. Monteclar admitted that he was the one who informed Atty. Petralba of the Supreme Court's decision.[38] He denied any knowledge about the attempt to bribe any of the Justices of the Court.[39]

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[35] *Id.* at 430-433.

[36] *Id.* at 475-477.

[37] The administrative case is entitled, *Gabriel T. Ingles v. Atty. Victor dela Serna*, docketed as A.C. No. 5763. In this case, Atty. De La Serna was said to have made the following statements in his pleading:

Recourse Available to Cattleya

"When it turned out that Tecson had already sold Lot 2-A to Fudot TCT -17402 in 1986, Cattleya can blame only its lawyers, Atty. Federico Cabilao and Atty. Gabriel Ingles. Apparently, these lawyers were themselves fooling Cattleya so that they can get their commission and overprice immediately. x x x (Underscoring supplied).

"Bad Faith on the Part of Cattleya and Its Lawyers Cabilao and Ingles

"x x x The reason is obvious, Cattleya through its agents and lawyers, Atty. Cabilao and Atty. Ingles, are in cohorts with Tecson and Pizarras."1

This case has been remanded to the Integrated Bar of the Philippines for further proceedings per the Court's Resolution dated 3 December 2002.

[38] *Rollo,* p. 480, TSN dated 18 June 2008.

[39] *Id.* at 482.

Mr. Chan and Atty. Petralba both admitted that they had never met Justice Tinga before and it was only during the hearing on 18 June 2008 that they saw Justice Tinga in person.[40] On the other hand, Atty. Monteclar stated that he had not known Justice Tinga personally, although he met Justice Tinga way back in 2003 in a hotel in Makati when Justice Tinga was given an honor by the Council of Deans by the Philippine Association of Law Schools.[41]

The parties were then required to submit their respective memoranda.[42]

Atty. De La Serna submitted a two-page Memorandum of Points. He pointed out that it was Mr. Chan who sought him out using different intermediaries and who acted as if he had advance knowledge of the decision; moreover, it was Mr. Chan who said that he had given ₱10 Million to Justice Tinga. Thus, if there was anyone guilty of contemptible conduct, it was Mr. Chan, and not him. De La Serna added that anyone in his situation would have acted similarly.[43]

Atty. Petralba and Mr. Chan jointly submitted their Comment[44] (Memorandum) while Cattleya filed its own Memorandum.[45]

We find Atty. De La Serna guilty of indirect contempt.

Contempt is defined as a disobedience to the Court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct that tends to bring the authority of the court

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[40] *Id.* at 372 and 476.

[41] *Id.* at 473.

[43] *Id.* at 561-562. Incidentally, on 8 July 2008, the Court received Atty. De La Serna's Petition for *En Banc* Review of the decision in this case, citing as grounds therefor the alleged repudiation of long–established doctrines and the bribery charges against Justice Tinga. The petition was denied on 06 February 2008. *Id.* at 161.

[44] *Id.* at 503-560.

[45] *Id.* at 631-635.

and the administration of law into disrepute or in some manner to impede the due administration of justice.[46] Indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct or embarrass the court and justice.[47] Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice has also been considered to constitute indirect contempt.[48]

An accusation of bribery is easy to concoct and difficult to disprove, the complainant must present panoply of evidence in support of such an accusation.[49] It will take more than the uncorroborated and independent statements of Atty. De La Serna to cast an aura of credibility to his accusations.

We reviewed the records of the case and find that the decision was made in accordance with law and established jurisprudence. The principles enunciated in *Lim v. Jorge*,[50] now being invoked by Atty. De La Serna, simply do not find application in this case. His insistence that Justice Tinga repudiated and contradicted everything he enunciated in the *Lim* case "just to accommodate Mr. Chan and all his cohorts and his money"[51] is not only groundless, it is also downright contemptuous.

In the first place, Mr. Chan, the "person most involved"[52] had categorically denied making the statement to the effect that he gave ₱10 Million to Justice Tinga, or to any other justice in the division.[53]

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[46] *Abad v. Somera*, 187 SCRA 75, cited in *Industrial and Transport Equipment, Inc. v. NLRC*, 348 Phil. 158, 163 (1998).

[47] *Guerrero v. Villamor*, G.R. Nos. 82238-42, 13 November 1989, 179 SCRA 355, 359.

[48] *Barredo-Fuentes v. Albarracin*, A.M. No. MTJ-05-1587, 15 April 2005, 456 SCRA 120, 131.

[49] *Castaños v. Escaño, Jr.*, Adm. Matter No. RTJ-93-955, 251 SCRA 174, 184-185, 191.

[50] G.R. No. 161861, 11 March 2005.

[51] *Rollo*, p. 123.

[52] As stated by Justice Quisumbing, *id.* at 354; TSN dated 18 June 2008.

[53] TSN, *id.* at 371-374; TSN dated 18 June 2008.

Justice Quisumbing:

> You denied. You said you did not make any statement to Atty. De la Serna concerning giving of Ten Million to Mr. Justice Tinga?

Mr. Chan:

> I did not.

Justice Quisumbing:

> I ask you now that you have not given anything to the other justices in this panel?

Mr. Chan:

> I did not, Your Honor.

Justice Quisumbing:

> And also deny that you have told Atty. De La Serna, Sr. that you have spent Ten Million for the Supreme Court?

Mr. Chan:

> I did not spend that on you, Your Honor.[54]

Atty. De La Serna claims that Mr. Chan and Atty. Petralba had advance knowledge of the Court's decision, based on the fact that Atty. Petralba and Mr. Chan were already intimating a favorable decision even before the decision was released. He points out that the decision was released only on 27 September 2007, when it was mailed at the Central Post Office, implying that if not for the fact that Mr. Chan paid for the decision, he would not have known of the outcome of the case even before the decision was released on 27 September 2007.

The decision was promulgated on 13 September 2007. Decisions of the Court are posted in its website a few days after their promulgation. In this case, the decision was published in the web on 19 September 2007, or before the decision was posted in the Manila Central Post Office on 27 September 2007. However, Mr. Chan stated that he learned of the decision

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[54] *Id.* at 394-395; TSN dated 18 June 2008.

only sometime in October of 2007, after Atty. Petralba had told him about it.[55] On the other hand, Atty. Monteclar admitted that he was the one who called up Atty. Petralba to inform him about the outcome of the case after he received a copy of the decision.[56]

Moreover, Atty. De La Serna's attribution of advance knowledge to Mr. Chan, apart from being incongruent with the declarations of the other personalities, does not dovetail with logic and common sense. For one, Mr. Chan was earnest in asking for, and pushing through with, the meeting on 25 September 2007 with De La Serna. *Had he known about the decision earlier, and more importantly, had he really paid ₱10 Million for a favorable decision, he would not have reiterated his offer or suggest any further meeting with De La Serna for the purchase of the subject property. The exercise would be downright irrational*.[57]

From a related perspective, *it would be plainly foolhardy for Mr. Chan to go through all the trouble and risk of bribing a Supreme Court Justice in the amount of ₱10 Million when he could have directly acquired the property by paying off De La Serna with the same amount which the latter had demanded in the first place.* This aspect was clearly demonstrated during the hearing, thus:

Justice Quisumbing:

> From your point of view, is there any indication from your own circle of anything spent for the Supreme Court by Mr. Chan?

Atty. Paulino Petralba:

> No, Your Honor. May I add something to that, Your Honor?

Justice Quisumbing:

> Yes.

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[55] *Id.* at 389.

[56] *Id.* at 347.

[57] *Id.* at 430-433.

Atty. Paulino Petralba:

> My own observation, Your Honors. If he was willing to spend Ten Million, why go through the difficult process of committing a crime of bribery and not just give it to the other party?

Justice Quisumbing:

> I see.

Atty. Paulino Petralba:

> It would be easier, Your Honor, because once a compromise agreement is signed, we submit it to the Court. In fact, I can already advise my client, even if the Court has not resolved the compromise agreement, go ahead construct because the compromise agreement will then bind the other party. It's much easier, Your Honor. It's much more logical.

Justice Quisumbing:

> I see. But in any case, you made an offer of Four Million?

Atty. Paulino Petralba:

> Yes, Your Honor.

Justice Quisumbing:

> But it was not accepted?

Atty. Paulino Petralba:

> He said his price is Ten Million.

Justice Quisumbing:

> And you did not agree to Ten Million?

Atty. Paulino Petralba:

> Well, the client told me that's too much.[58]

Earlier, Justice Velasco pointed out the ludicrousness of Atty. De La Serna's claim in the following exchange with Atty. De La Serna himself:

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[58] *Id.* at 441-444.

Justice Velasco:

> That is correct.
> In your offer, the price that your client want is Ten Million Pesos?

Atty. De La Serna:

> Ten Million.

Justice Velasco:

> So if that's the price for the lot of petitioner Fudot and he spent Ten Million, wouldn't it be a lot easier for him to just have paid your client the price that she was asking for her lot in Bohol?

Atty. De la Serna:

> I'm not thinking for Johnny Chan, Your Honor. I'm just relaying what he told me.[59]

Atty. De La Serna's other basis for believing that the decision was prompted by bribery was the time it took for this case to be decided, which he intimated was uncommonly short. He bewails that the case was pinpointed, then plucked out from underneath 20,000 other cases, and thereafter resolved in less than two (2) years. He also compared the case with *Oppus v. Sandiganbayan*, G.R. No. 150186; a case which he previously handled, claiming that accused Oppus continues to languish in jail because the Supreme Court had not resolved his appeal even after the lapse of more than ten (10) years.[60] De La Serna's plaint is baseless and *non sequitur*.

Atty. De La Serna seems to be unaware that the Supreme Court is mandated by the Constitution to decide cases within two (2) years from the date of submission. Art. VIII, Section 15(1) of the Constitution reads:

Section 15 (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four

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[59] *Id.* at 237-238.

[60] *Id.* at 124-126.

months from date of submission for the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

The instant petition was filed on 6 March 2006. Respondent was required to file its comment thereon, which it submitted on 1 June 2006. The Court thereafter required petitioner to file her reply, and petitioner filed one on 11 September 2006. Her reply was noted on 13 November 2006. Thus, as of 13 November 2006, the case was deemed submitted, there being no other pleading required by the Court. From that point on, it is but logical to assume that a decision would be forthcoming.

As for the *Oppus* case, it appears from the records that De La Serna used to be Oppus's lawyer, but he was replaced upon Oppus's motion. Moreover, the case was already deemed closed and terminated as of 15 October 2007, when the Court granted Oppus's Motion to Withdraw Petition/Appeal filed on 19 September 2007. Contrary to De La Serna's claim, the case is no longer pending as it was already been disposed of. Moreover, the *Oppus* case was assigned to another *ponente*, not Justice Tinga. The period during which the *Oppus* case was pending cannot serve as sound basis for comparison with this case.

In addition, Atty. De La Serna's assumption that the instant case was decided ahead of 20,000 other cases is preposterous. Deducting the General Register Number (G.R. No.) of the *Oppus* case from the instant case would lead one to infer that 20,000 cases are still pending, which is not the case, since as pointed out by Justice Carpio, there are no more than ten thousand cases pending in the Supreme Court at any one time.[61] Besides, in between the G.R. No. of the *Oppus* case (G.R. No. 171008) and that of this case (G.R. No.150186), are thousands of cases.

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[61] *Id.* at 325.

A lawyer is, first and foremost, an officer of the court. Corollary to his duty to observe and maintain the respect due to the courts and judicial officers is to support the courts against "unjust criticism and clamor."[62] His duty is to uphold the dignity and the authority of the courts to which he owes fidelity, "not to promote distrust in the administration of justice, as it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice."[63] As we held in one case:

> It is [the] respondent's duty as an officer of the court, to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy. x x x[64]

As part of the machinery for the administration of justice, a lawyer is expected to bring to the fore irregular and questionable practices of those sitting in court which tend to corrode the judicial machinery. Thus, if he acquired reliable information that anomalies are perpetrated by judicial officers, it is incumbent upon him to report the matter to the Court so that it may be properly acted upon. An omission or even a delay in reporting may tend to erode the dignity of, and the public's trust in, the judicial system.

The Court is perplexed by the actuations of Atty. De La Serna. Claiming that he had been informed that a member of the Court was involved in bribery, yet he chose to remain silent in the meantime and to divulge the information long after he had come to know that he lost the case. He claims that as early as 25 September 2007, Mr. Chan told him that he had already spent ₱10 Million for Justice Tinga; yet he failed to inform the

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[62] *Lualhati v. Albert*, 57 Phil. 86, 92 (1932).

[63] *Surigao Mineral Reservation Board v. Cloribel*, No. L-27072, 9 January 1970, 31 SCRA 1, 16-17.

[64] In Re: *Published Alleged Threats Against Members of the Court in the Plunder Law Case Hurled by Atty. Leonard De Vera*, 434 Phil. 503, 510 (2002).

Court of this matter waited until 4 November 2007 before he divulged the alleged bribery in his Request for Inhibition. According to him, he only became convinced that the bribe took place after he received a copy of the decision. Yet there was no mention of the alleged bribery in his motion for reconsideration dated 20 October 2007. For this, he offers the lame pretext that adverted bribery is a mere "extraneous matter (that) is not relevant as far as the legal issues are concerned in this case," and because his request for inhibition dated 4 November 2007, where the matter was mentioned for the first time, "at least does not have a deadline."[65] While admitting that he did not even verify from other sources if Mr. Chan's statement had any factual basis, De La Serna offers another feeble explanation for his delayed reaction in that he could not just go to the Supreme Court and request for investigation, as he could not even pass through the guards.[66] A lawyer of De La Serna's caliber and experience would know that there is a proper way of lodging a formal complaint for investigation, including sending it by registered mail.

That De La Serna did not report the matter immediately to the Court suffuses unshakeable dubiety to his claim that Mr. Chan had uttered the statements attributed to him. That De La Serna brought up the issue of bribery after an unfavorable decision was issued makes the allegation all the more a contrived afterthought, a hastily concocted story brought to cast doubts on the integrity not only of Justice Tinga, but also of the entire Supreme Court.

This is not to say, however, that as an officer of the court, Atty. De La Serna cannot criticize the court.[67] We have long recognized and respected the right of a lawyer, or any person, for that matter, to be critical of courts and magistrates as long as they are made in properly respectful terms and through legitimate channels. The Court, in *In re: Almacen*,[68] held:

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[65] *Rollo,* p. 185.

[66] *Id.* at 268-269.

[67] *Tiongco v. Hon. Aguilar*, 310 Phil. 652 (1995).

[68] *Id.* at 661 citing In re: *Almacen*, 31 SCRA 562.

Moreover, every citizen has the right to comment upon and criticize the actuations of public officers. This right is not diminished by the fact that the criticism is aimed at a judicial authority, or that is it articulated by a lawyer. Such right is especially recognized where the criticism concerns a concluded litigation, because then the court's actuation are thrown open to public consumption. x x x

x x x x x x x x x

Courts and judges are not sacrosanct. They should and expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizen whom it is expected to serve.

Well-recognized therefore is the right of a lawyer, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges. x x x

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Hence, as a citizen and as officer of the court, a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen.

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But it is the cardinal condition of all such criticism that it shall be bona fide and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.[69]

Everything considered on the basis of the proofs on record, reason and normal discernment, Atty. De La Serna's statements bear the badges of falsehood while the common version of the witnesses who disputed his statements is imbued with the

[69] In Re: *Almacen, supra* note 73 at 576-580.

hallmarks of truth. There is more. De La Serna's declarations were maliciously and irresponsibly made. They exceeded the boundaries of decency and propriety. The libelous attack on the integrity and credibility of Justice Tinga tend to degrade the dignity of the Court and erode public confidence that should be accorded to it. As we stated in *In re: Wenceslao Laureta*,[70] thus:

> To allow litigants to *go beyond the Court's resolution* and claim that the members acted "with deliberate bad faith" and rendered an "unjust resolution" in disregard or violation of the duty of their high office to act upon their own independent consideration and judgment of the matter at hand would be to *destroy the authenticity, integrity and conclusiveness* of such collegiate acts and resolutions and to disregard utterly the presumption of regular performance of official duty. To allow such collateral attack would destroy the separation of powers and *undermine the role of the Supreme Court as the final arbiter of all justiciable disputes*.[71]

Atty. De La Serna has transcended the permissible bounds of fair comment and criticism. His irresponsible and baseless statements, his unrepentant stance and smug insistence of his malicious and unfounded accusation against Justice Tinga have sullied the dignity and authority of this Court. Beyond question, therefore, De La Serna's culpability for indirect contempt warrants the penalty of a fine not exceeding ₱30,000.00 or imprisonment not exceeding six (6) months or both under the Rules.[72]

The power to declare a person in contempt of court and in dealing with him accordingly is a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein and the administration of justice from callous misbehavior and offensive personalities.[73] Respect for the courts guarantees the stability of the judicial institution. Without such guarantee, the

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[70] 12 March 1987, 148 SCRA 382.

[71] *Id.* at 420-421.

[72] RULES OF CIVIL PROCEDURE, Rule 71, Sec. 7.

[73] *De Guia v. Guerrero, Jr.*, A.M. No. RTJ-93-1099, 1 August 1994, 234 SCRA 625, 630.

institution would be resting on a very shaky foundation.[74] The Court will not hesitate to wield this inherent power to preserve its honor and dignity and safeguard the morals and ethics of the legal profession.[75]

WHEREFORE, premises considered, Atty. Victor De La Serna is found *GUILTY* of indirect contempt of court. He is hereby *FINED* in the amount of ₱30,000.00 to be paid within ten (10) days from receipt of this Resolution and *WARNED* that a repetition of a similar act will warrant a more severe penalty.

Let a copy of this Resolution be attached to Atty. De La Serna's personal record in the Office of the Bar Confidant and copies thereof furnished the Integrated Bar of the Philippines (IBP).

The IBP is ordered to submit with *DISPATCH* its Report on the investigation in *Gabriel T. Ingles v. Atty. Victor De La Serna,* docketed as A.C. No. 5763.

This Resolution is immediately executory.

SO ORDERED.

Quisumbing, Acting C.J., Ynares-Santiago, Carpio, Corona, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Puno, C.J. and *Reyes, J.,* on official leave.

Austria-Martinez, J., on leave.

Tinga, J., no part. *Ponente* in main case.

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[74] *Mercado v. Security Bank Corporation,* G.R. No. 160445, 16 February 2006, 482 SCRA 501, 518-519.

[75] *Roxas v. De Zuzuarregui, Jr.*, G.R. No. 152072, 12 July 2007, 527 SCRA 446, 464.

THIRD DIVISION

[G.R. No. 175587. October 24, 2008]

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, *petitioner, vs.* **JOSEPH ANTHONY M. ALEJANDRO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; SUFFICIENCY OF EVIDENCE; MORAL DAMAGES; TO ARRIVE AT A JUDICIOUS APPROXIMATION OF EMOTIONAL OR MORAL INJURY, COMPETENT AND SUBSTANTIAL PROOF OF THE SUFFERING EXPERIENCED MUST BE LAID BEFORE THE COURT; ESSENTIAL TO THIS APPROXIMATION ARE DEFINITE FINDINGS AS TO WHAT THE ALLEGED MORAL DAMAGES SUFFERED CONSISTED OF; CASE AT BAR. — The award of ₱500,000.00 as moral damages is commensurate to the anxiety and inconvenience suffered by respondent. To award him the amount of ₱5 Million under the circumstances is scandalously excessive. Other than the self-serving allegations that he suffered untold humiliation when he disclosed to his clients the pendency of the attachment case, respondent did not present any witness to whom he made such disclosure. He thus failed to prove by preponderance of evidence the degree of moral suffering or injury he suffered to convince the Court to increase the award. To arrive at a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before the court. Essential to this approximation are definite findings as to what the alleged moral damages suffered consisted of; otherwise, such damages would become a penalty rather than a compensation for actual injury suffered.

2. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; BASIS; CASE AT BAR. — [T]he award of ₱50,000.00 as nominal damages is proper under the circumstances. Nominal damages are not intended as indemnification for any loss suffered. It is an award decreed to vindicate the violation of a right; it could be properly based on the duration of the period during which

the plaintiff was prevented from exercising such right. In the instant case, the amount of the bond posted does not prove the actual sum garnished. The period of two months during which respondent was prevented from using the subject bank deposits is thus the most appropriate yardstick in determining the amount of nominal damages. Under the circumstances, the amount of ₱2 Million being claimed by respondent is excessive and without basis.

3. ID.; ID.; ATTORNEY'S FEES; PROFESSIONAL STANDING OF A COUNSEL, TO BE PROPERLY CONSIDERED AS ONE OF THE FACTORS IN DETERMINING THE AWARD THEREOF, SHOULD BE ESTABLISHED DURING TRIAL PROPER, WHERE THE OTHER PARTY COULD RAISE OBJECTIONS AND CROSS-EXAMINE THE WITNESSES. — Professional standing of a counsel, to be properly considered as one of the factors in determining the award of attorney's fees, should be established during trial proper, where the other party could raise objections and cross-examine the witnesses. It is thus too late for respondent to present evidence of this nature at this stage of the proceedings. Besides, the issue in this case is simple, *i.e.*, the propriety of the garnishment of respondent's deposits, which does not merit an award of ₱1 Million as attorney's fees.

4. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED AS A DETERRENT AGAINST OR AS A NEGATIVE INCENTIVE TO CURB SOCIALLY DELETERIOUS ACTIONS. — As for exemplary damages, the Court's award of ₱500,000.00 is reasonable and sufficient to discourage petitioner from resorting to unfounded assertions in securing writs of attachment. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Abbas Alejandro-Abbas Francisco & Associates for respondent.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

This resolves the motion for reconsideration of respondent praying for an increase in the amount of damages awarded in his favor in our September 21, 2007 Decision.

Respondent argues that the award of nominal damages of ₱50,000.00 should be increased to ₱2 Million based on the ₱18,798,734.69 preliminary attachment bond posted by petitioner; that his social/professional standing warrants the award of moral damages in the amount of ₱5 Million instead of ₱500,000.00; that attorney's fees of ₱1 Million and not ₱200,000.00 should be awarded considering the nature of the case, the services rendered by the counsel, and the latter's professional standing; and that the ₱500,000.00 exemplary damages should be increased to deter petitioner from securing writs of attachment without basis.

The contentions are without merit.

The award of ₱500,000.00 as moral damages is commensurate to the anxiety and inconvenience suffered by respondent. To award him the amount of ₱5 Million under the circumstances is scandalously excessive. Other than the self-serving allegations that he suffered untold humiliation when he disclosed to his clients the pendency of the attachment case, respondent did not present any witness to whom he made such disclosure. He thus failed to prove by preponderance of evidence the degree of moral suffering or injury he suffered to convince the Court to increase the award. To arrive at a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before the court. Essential to this approximation are definite findings as to what the alleged moral damages suffered consisted of; otherwise, such damages would become a penalty rather than a compensation for actual injury suffered.[1]

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[1] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 256.

Likewise, the award of ₱50,000.00 as nominal damages is proper under the circumstances. Nominal damages are not intended as indemnification for any loss suffered. It is an award decreed to vindicate the violation of a right;[2] it could be properly based on the duration of the period during which the plaintiff was prevented from exercising such right. In the instant case, the amount of the bond posted does not prove the actual sum garnished. The period of two months during which respondent was prevented from using the subject bank deposits is thus the most appropriate yardstick in determining the amount of nominal damages. Under the circumstances, the amount of ₱2 Million being claimed by respondent is excessive and without basis.

Professional standing of a counsel, to be properly considered as one of the factors in determining the award of attorney's fees, should be established during trial proper, where the other party could raise objections and cross-examine the witnesses. It is thus too late for respondent to present evidence of this nature at this stage of the proceedings. Besides, the issue in this case is simple, *i.e.*, the propriety of the garnishment of respondent's deposits, which does not merit an award of ₱1 Million as attorney's fees.

As for exemplary damages, the Court's award of ₱500,000.00 is reasonable and sufficient to discourage petitioner from resorting to unfounded assertions in securing writs of attachment. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[3]

WHEREFORE, respondent's motion for partial reconsideration is *DENIED* with finality.

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[2] *Almeda v. Cariño*, G.R. No. 152143, January 13, 2003, 395 SCRA 144, 149-150.

[3] *Philippine National Bank v. Court of Appeals*, G.R. No. 116181, April 17, 1996, 256 SCRA 309, 323.

SO ORDERED.

Carpio,[*] *Azcuna,*[**] *Chico-Nazario,* and *Nachura, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177825. October 24, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENE ROSAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONIES OF PROSECUTION WITNESSES CANNOT OVERCOME THE CATEGORICAL AND POSITIVE IDENTIFICATION OF ACCUSED-APPELLANT BY BOTH WITNESSES AS THE PERSON WHO SHOT THE VICTIM. — [T]he alleged inconsistency in the testimonies of the aforesaid prosecution witnesses is not sufficient to adversely affect the credibility of the prosecution witnesses. It merely pertains to accused-appellant's mode of escape, which cannot overcome the categorical and positive identification of accused-appellant by both witnesses as the person who shot the victim. It is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses

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[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 531 dated October 20, 2008.

[**] Additional member in lieu of Associate Justice Ruben T. Reyes per Special Order No. 521 dated September 29, 2008.

as it could mean that their testimonies were fabricated and rehearsed. In the instant case, while prosecution witnesses Antonio and Wilfredo differ in their narration of minor details, they identified without equivocation the accused-appellant as the perpetrator of the crime.

2. ID.; ID.; ID.; TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF A WITNESS IS ENTITLED TO GREAT WEIGHT, AND IS EVEN CONCLUSIVE AND BINDING ON THE COURT. — The trial court gave full faith and credence to the testimonies of Wilfredo and Antonio. The time-tested doctrine is that a trial court's assessment of the credibility of a witness is entitled to great weight, and is even conclusive and binding on this Court. The reason is obvious. The trial court has the unique opportunity to observe at firsthand the witnesses, particularly their demeanor, conduct and attitude in the course of the trial. Accused-appellant has not shown any evidence of improper motive on the part of Wilfredo and Antonio that would have driven them to falsely testify against him. Where there is nothing to indicate that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand under the solemnity of an oath deserve full faith and credence. There being no fact or circumstance of weight and substance that would otherwise warrant a different conclusion, the trial court's evaluation of the credibility of the prosecution witnesses must be sustained.

3. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE. — Accused-appellant relies on his alibi that he was in his boarding house located along USM Avenue, Kabacan, Cotabato the whole morning of September 15, 1995. For alibi to prosper, however, 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. Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water.

4. ID.; CRIMINAL PROCEDURE; INSTITUTION OF CRIMINAL ACTIONS; DESIGNATION OF THE OFFENSE; WORDS SUCH AS "QUALIFYING" OR "QUALIFIED BY" TO PROPERLY QUALIFY AN OFFENSE; WHAT RAISES A CRIME TO A HIGHER CATEGORY IS THE SPECIFIC

ALLEGATION OF AN ATTENDANT CIRCUMSTANCE WHICH ADDS THE ESSENTIAL ELEMENT RAISING THE CRIME TO A HIGHER CATEGORY. — In his last-ditch effort to relieve him of liability for the crime charged, accused-appellant argues that he cannot be convicted of murder because the Information failed to state that treachery was a qualifying circumstance. Accused-appellant's argument deserves scant consideration. The recent case of *People v. Sayaboc* reiterated the pronouncement in *People v. Aquino* that even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. Section 8 of the Rules of Criminal Procedure does not require the use of such words to refer to the circumstances which raise the category of an offense. It is not the use of the words "qualifying" or "qualified by" that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category. It is sufficient that the qualifying circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare full for his defense, thus precluding surprises during trial.

5. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; ESTABLISHED IN CASE AT BAR. — Not only was treachery sufficiently alleged, it was likewise proven beyond reasonable doubt by the evidence on record. It is a well-entrenched rule that treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In the instant case, Nestor Estacio was attacked from behind and assaulted without warning and provocation. Even when the already wounded Nestor fell on the ground, accused-appellant mercilessly fired several more shots at him. He obviously wanted to ensure the execution of the killing, without risk to himself, and deprive Nestor of any opportunity to retaliate or defend himself. The fact that accused-appellant brought a gun with him indicated that he made a deliberate and

conscious adoption of the means to kill Nestor. Further, the autopsy conducted by Dr. Necessario revealed multiple gunshot wounds at the lower back are of the lumbar region of Nestor. This autopsy indubitably indicates that the shots were fired from behind on the unsuspecting victim. Clearly then, treachery or *alevosia* has been sufficiently 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

LEONARDO-DE CASTRO, *J.*:

Assailed before this Court is the decision[1] dated November 29, 2006 of the Court of Appeals in *CA-G.R. CR-HC No. 00301* which affirmed the decision of the Regional Trial Court (RTC) of Kabacan, Cotabato, Branch 22, in Criminal Case No. 98-105, finding accused-appellant Rene Rosas guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua*.

In the court of origin, accused-appellant was charged with the crime of Murder in an Information[2] dated October 13, 1998. The crime was alleged to have been committed, as follows:

That on September 15, 1995, in the Municipality of Kabakan, Province of Cotabato, Philippines, the said accused, armed with a gun, with intent to kill did then and there, willfully, unlawfully, feloniously and with treachery, attack, assault and shot NESTOR ESTACIO, thereby hitting and inflicting upon the latter multiple gunshot wounds on the different parts of his body, which caused his instantaneous death.

CONTRARY TO LAW.

[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justice Teresita Dy-Liaco Flores and Associate Justice Mario V. Lopez, concurring; *rollo*, pp. 4-20.

[2] CA *Rollo*, p. 2.

When arraigned on January 5, 1999, accused-appellant, assisted by counsel *de oficio*, pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued, in the course of which the prosecution presented the testimonies of Dr. Crisostomo Necessario, Jr., Municipal Health Officer of Kabacan, Cotabato; Wilfredo Bataga, mayor of Kabacan, Cotabato; Antonio Palomar Bataga, Jr.; and Arceli Estacio, widow of the victim.

For its part, the defense presented accused-appellant himself and his girlfriend, Karen Nayona.

The prosecution's version of the incident is succinctly summarized by the Office of the Solicitor General in its Appellee's Brief,[3] to wit:

On September 15, 1995, around eleven o'clock in the morning, Antonio Palomar Bataga, Jr. was outside the billiard hall along Aglipay Street near the public terminal and market of Kabacan, Poblacion, Kabacan, Cotabato. Around 15 meters away, he saw appellant Rene Rosas standing beside the post near a store across the street. Palomar knew appellant long before, as they were both into gambling. Thereafter, the victim, Nestor Estacio, arrived alone on board his motorcycle. He stopped in front of the Salcedo Newsstand to buy a newspaper without switching off his motorcycle's engine. Before he could drive off, a Weena bus, which was leaving the Bus Terminal about that time, blocked his way. Then, appellant, who was coming from the left side behind the victim, shot the latter with a pistol at close range. After the victim fell on the ground, more gunshots were heard, which gunshots were fired at him to make sure that he was dead. After the shooting, appellant jumped into a motorcycle and escaped.

Meanwhile, around that same time and fifteen (15) meters away, in a *carinderia* located at the Bus Terminal in Poblacion, Kabacan, Cotabato, several gunshots were heard. Wilfredo Bataga, who was the owner of the said carinderia and also the commanding officer of the 39th Infantry Batallion assigned in Kabacan, Cotabato, immediately proceeded to where the gunshots came from. He saw appellant about to run and a dead body being carried by four persons into a tricycle. Wilfredo upon seeing that appellant was armed with a 45-caliber pistol, ran after the latter but lost him in the crowd.

[3] *Id.* at 81-96.

On October 27, 1995, Wilfredo was handed with a cartographic sketch of the suspect made by the National Bureau of Investigation. He indorsed the cartographic sketch to the police of the *Poblacion* and reported the incident.

On August 5, 1998, around 5:30 in the afternoon, appellant was spotted a meter away in front of Wilfredo's house. Wilfredo upon seeing appellant took out his copy of the cartographic sketch and confronted appellant that it was his picture. Appellant answered "*Siguro ako nga*." Appellant was then immediately arrested.

The post-mortem examination conducted by Dr. Crisostomo Necessario, Municipal Health Officer of Kabacan, Cotabato revealed that the victim sustained multiple gunshot wounds in the lumbar region (lower back area), a gunshot wound in the epigastric area (upper mid-portion of the abdomen near the chest) and the mid-left portion of the hypogastric area (left abdomen). Thereafter, Dr. Necessario issued a Medical Report attributing the victim's death to hypovolemic shock caused by gunshot wounds.

On the other hand, accused-appellant's version is hinged mainly on denial and alibi. He testified that in the morning of September 15, 1995, he was at his boarding house located along USM Avenue, Kabacan, Cotabato. The following day, he went home to Mintal Relocation in Davao City and came back to Kabacan, Cotabato on August 5, 1998. On that day, while accused-appellant was in a public market, a certain Dodong Rivera approached and informed him that he should talk to Mayor Wilfredo Bataga because a group of men was out to kill him. So, accused-appellant proceeded to the house of Mayor Bataga who showed him a cartographic sketch. When accused-appellant was asked if it was him on the sketch, he replied, "*Siguro, ako nga*." He was then taken to the Kabacan Police Station where he was detained.

Karen Nayona, accused-appellant's girlfriend, merely corroborated his testimony that he was in the boarding house at USM Avenue, Kabacan, Cotabato in the morning of September 15, 1995. Then, at around 11 o'clock in the morning, they met and went to a fastfood restaurant located along USM Avenue. There, she told accused-appellant that she was two months pregnant with his baby.

In a decision[4] dated February 1, 2001, the trial court rendered its decision convicting accused-appellant of the crime of murder, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing and finding the accused Rene Rosas *alias* Boy Rosal guilty beyond reasonable doubt of the crime of murder qualified by treachery, judgment is hereby rendered sentencing the accused with penalty of *Reclusion Perpetua* and to pay the heirs of Nestor Estacio the sum of ₱50,000.00 for his death, ₱40,000.00 for funeral and burial expenses and ₱50,000.00 for moral damages.

SO ORDERED.

Pursuant to Section 3(c) of Rule 122 of the Revised Rules of Criminal Procedure,[5] accused-appellant appealed his conviction to the Supreme Court *via* a notice of appeal.[6]

On February 4, 2002, this Court accepted the appeal and docketed the same as G.R. No. 148879.[7]

On September 22, 2004, conformably with our pronouncement in *People v. Mateo*[8] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this Court resolved to refer the case to the Court of Appeals, whereat it was docketed as *CA-G.R. CR-HC No. 00301*, for appropriate action and disposition.[9]

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[4] *Id.* at 16-22.

[5] Sec. 3(c). The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua* or life imprisonment, or where a lesser penalty is imposed but for offense committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

[6] CA *Rollo*, p. 23.

[7] *Id.* at 25.

[8] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[9] *Rollo*, p. 3.

In its decision dated November 29, 2006, the Court of Appeals upheld the conviction of accused-appellant. The decretal portion of the decision reads:

> WHEREFORE, the assailed decision is hereby **AFFIRMED**, with modification that the award for actual damages is **DELETED** for reasons already discussed; in lieu thereof, an award of temperate damages in the amount of Twenty Five Thousand (₱25,000.00) Pesos is hereby **GRANTED**.
>
> SO ORDERED.

From the Court of Appeals, the case was then elevated to this Court upon filing by accused-appellant of a notice of appeal on January 2, 2007.[10] In its Resolution[11] of July 23, 2007, the Court resolved to require both parties to submit their respective supplemental briefs, if they so desire. The parties, however, opted not to file supplemental briefs and manifested that they were merely adopting their briefs filed before the appellate court.

In this appeal, accused-appellant assigns the following errors:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT WITH MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT ALLEGED WITH SPECIFICITY IN THE INFROMATION (sic) PURSUANT TO SECTION 8, RULE 110 OF THE REVISED RULES ON CRIMINAL PROCEDURE.[12]

Accused-appellant insists that the prosecution failed to prove his guilt beyond reasonable doubt. He assails the credibility of

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[10] *Id.* at 21.

[11] *Id.* at 26.

[12] *Id.* at 9.

the prosecution witnesses whose testimonies he pictured as inconsistent and fabricated. He also avers that the prosecution failed to establish his identity as the perpetrator of the crime as nobody actually saw him shoot the victim.

After a careful consideration of the evidence of this case, we find no reason to reverse the decision of the Court of Appeals which affirmed the RTC decision in Criminal Case No. 98-105.

Accused-appellant cites an inconsistency in the testimonies of prosecution witnesses Wilfredo Bataga and Antonio Palomar Bataga, Jr. While Wilfredo testified that he saw accused-appellant about to run from the crime scene after the shooting, Antonio, on the other hand, testified that accused-appellant jumped into a motorcycle and escaped after the incident. According to accused-appellant, their contradicting testimonies should not be accorded any weight and credence.

To our mind, the alleged inconsistency in the testimonies of the aforesaid prosecution witnesses is not sufficient to adversely affect the credibility of the prosecution witnesses. It merely pertains to accused-appellant's mode of escape, which cannot overcome the categorical and positive identification of accused-appellant by both witnesses as the person who shot the victim. It is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were fabricated and rehearsed.[13] In the instant case, while prosecution witnesses Antonio and Wilfredo differ in their narration of minor details, they identified without equivocation the accused-appellant as the perpetrator of the crime. Antonio declared on the witness stand:

PROS. DIZON, JR.:
Q. By the way, do you know the accused in this case?
A. Yes, sir.

[13] *People v. Lacbayan*, G.R. No. 125006, August 31, 2000, 339 SCRA 396, 401.

Q. Do you know Rene Rosas?
A Yes, sir.
Q. Do you know the other name of Rene Rosas?
A. Yes, sir.
Q. Tell the Court what is the other name or the *alias* of Rene Rosas?
A. Boy Rosal, sir.
Q. Now, prior to 1995 have you known Rene Rosas?
A. Yes, sir.
Q. For how long did you know Rene Rosas prior to 1995?
A. Long time ago, sir.
Q. How come you know him?
A. Because of our gambling activities.
Q. By the way, do you gamble?
A. Yes, sir.
Q. Now, how about the victim here, Mr. Estacio, do you know him?
A. Yes, sir.
Q. How come you know him?
A. Because he was an employee of the Municipal Hall, sir.
Q. You said you were outside the Billiard Hall at 11:00 o'clock in the morning, now while you were there on September 15, 1995, was there any unusual incident that happened?
A. Yes, there was, sir.
Q. Tell the Court, what was that unusual incident that happened?
A. The killing of Nestor Estacio, sir.
Q. Now, did you see the killing of Nestor Estacio?
A. Yes, sir.
Q. Now, you said you saw the killing of Nestor Estacio, what was the weapon used in the killing of Mr. Estacio?
A. Pistol, sir.
Q. How long was that?
A. Just a short pistol, sir.
Q. Now, you said that Nestor Estacio was killed, did you see who killed Nestor Estacio?

ATTY. BALAGOT:

Your Honor please, leading, Your Honor.

PROS. DIZON, JR.:

He testified already, Your Honor please, that he saw.

COURT:

Yes, he may answer.

A. Yes, sir.

Q. Please name him.
A. Rene Rosas, sir.[14]

Antonio Bataga, Jr. could not have made a mistake with respect to accused-appellant's identity considering that he knew accused-appellant long before he witnessed the shooting incident in 1995. Antonio who was in the vicinity of the crime scene would thus be able to unmistakably recognize accused-appellant when the incident happened at around 11 o'clock in the morning.

Antonio's testimony corroborated that of Wilfredo Bataga, thus:

PROS. DIZON, JR.:
Q. Why were you there, was there any incident of happening that occurred?
A. When I heard several gunbursts, I immediately proceeded to the scene of the crime and I saw the suspect including the lying victim Nestor Estacio which was brought along by four (4) persons in loading a tricycle in going to a hospital, sir.

x x x x x x x x x

Q. Now, you said you saw Rene Rosas, what was he doing when you saw him?
A. When I saw him, he was already running together with innocent civilians towards the market, sir.
Q. Now, you said you also saw the dead body of a person, what is the name of that person who you said is dead?
A. Nestor Estacio, sir.
Q. Now, what did you do upon seeing the dead body?
A. He was carried upon by four persons inside the tricycle for immediate medication, sir.
Q. Now, you said you saw the accused Rene Rosas, what did you do when you saw him?
A. I chased him, sir. I was not able to arrest him due to the thickness of the civilians running together with him, sir.

x x x x x x x x x

[14] TSN, July 7, 1999, pp. 4-6.

ATTY. BALAGOT:

Q. You said that on September 15, 1995, at around 11:00 o'clock you were at your *carinderia*, is that right?
A. Yes, sir.
Q. Now, your *carinderia* was located that time at the old bus terminal building, is that right?
A. Yes, sir.
Q. And you said while you were there you heard gunshots?
A. Yes, sir.
Q. And you went to the site from where the gunshots were heard?
A. Yes, sir.
Q. How far was your *carinderia* from the site where you heard those gunshots?
A. That was more or less 15 meters, sir.
Q Fifteen (15) if you will pass through the terminal going to that site?
A In the middle of the terminal, sir.
Q Now, at that time, Mr. Witness , is it not right that you passed through Jacinto Street particularly at the back of the old terminal building?
A I intended to conduct a hamper; a block in front of Ku Kuan so that I could arrest the suspect and I personally found out and identified the running person to be Rene Rosas @ Boy Rosas running together with scampered civilians, sir.
B But you passed through Jacinto Street, Mr. Witness, is it right?
A Yes, sir, and I saw him personally.
Q And if you will pass through Jacinto Street, first the walking distance would be around 15 meters, is that right?
A I saw him personally this way but I crossed the block, sir.
Q Now, because at that juncture while you were walking through that Street, you met this Rene Rosas, is that right?
A I was not able to see him but when I arrived at the scene of the crime I saw him personally and I chased him but could not arrest him due to the thickness of the civilians running together with him.
Q Now, you claimed that you saw Rene Rosas the accused personally, he was running at the time when you saw him, is that right?
A About to run when I reached the scene of the crime, sir.
Q Also there were other persons who were about to run at that time, is that right?

A Yes, sir, when I reached the scene to chase him he ran already.
Q That you choose Rene Rosas because that time he was the bodyguard of Mr. Karutin, is that right?
A I was able to identify him when the cartographic sketch of the suspect coming from the NBI expert and Dr. Sevilla was given to me, sir.
Q Mr. Witness, on September 15, 1995, why did you chase Rene Rosas?
A Because I saw in his arm a pistol caliber 45, sir.[15]

Clearly, Wilfredo positively identified appellant as the person running away from the crime scene towards the public market after shooting the victim. Just like Antonio, Wilfredo could also not have been mistaken as to accused-appellant's identity considering that he was just 15 meters away from the crime scene and the crime was committed in broad daylight.

Verily, the testimonies of Wilfredo and Antonio on material details are coherent, unequivocal and consistent with each other. Antonio, who was standing just a few meters away, saw accused-appellant shoot the victim from behind, then board a motorcycle. On the other hand, Wilfredo saw accused-appellant immediately after the shooting fleeing from the scene of the crime carrying a 45-caliber pistol. Clearly, both witnesses personally saw accused-appellant at the scene of the crime at the time it was committed. Contrary to accused-appellant's assertion, the declarations and testimonies of Antonio and Wilfredo established beyond reasonable doubt his identity as the author of the crime.

The trial court gave full faith and credence to the testimonies of Wilfredo and Antonio. The time-tested doctrine is that a trial court's assessment of the credibility of a witness is entitled to great weight, and is even conclusive and binding on this Court. The reason is obvious. The trial court has the unique opportunity to observe at firsthand the witnesses, particularly their demeanor, conduct and attitude in the course of the trial.[16]

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[15] TSN, March 17, 1999, pp. 5-7; 11-13.

[16] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658.

Accused-appellant has not shown any evidence of improper motive on the part of Wilfredo and Antonio that would have driven them to falsely testify against him. Where there is nothing to indicate that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand under the solemnity of an oath deserve full faith and credence.[17]

There being no fact or circumstance of weight and substance that would otherwise warrant a different conclusion, the trial court's evaluation of the credibility of the prosecution witnesses must be sustained.

Accused-appellant relies on his alibi that he was in his boarding house located along USM Avenue, Kabacan, Cotabato the whole morning of September 15, 1995. For alibi to prosper, however, 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.[18] Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water.[19]

Here, the evidence shows that USM Avenue, Kabacan, Cotabato where accused-appellant allegedly was on September 15, 1995 is only 1.5 kilometers away from the public market and terminal in Poblacion, Kabacan, Cotabato where the crime was committed.[20] According to the trial court, this distance between the crime scene and the whereabouts of accused-appellant can easily be negotiated by foot within 10 to 15 minutes.[21] In short,

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[17] *People v. Benito*, G.R. No. 128072, February 19, 1999, 303 SCRA 468, 477.

[18] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 116.

[19] *People v. Lopez*, G.R. No. 149808, November 27, 2003, 416 SCRA 542, 547.

[20] TSN, February 10, 2000, p. 5.

[21] CA *Rollo*, p. 64.

accused-appellant failed to establish by clear and convincing evidence the physical impossibility of his presence at the scene of the crime on the date and time of its commission. Moreover, the defense of alibi crumbles in the face of the positive identification of accused-appellant by the aforesaid prosecution witnesses as the perpetrator of the crime.[22]

In his last-ditch effort to relieve him of liability for the crime charged, accused-appellant argues that he cannot be convicted of murder because the Information failed to state that treachery was a qualifying circumstance.

Accused-appellant's argument deserves scant consideration. The recent case of *People v. Sayaboc*[23] reiterated the pronouncement in *People v. Aquino*[24] that even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. Section 8 of the Rules of Criminal Procedure[25] does not require the use of such words to refer to the circumstances which raise the category of an offense. It is not the use of the words "qualifying" or "qualified by" that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category. It is sufficient that the qualifying circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during trial.

The Information in this case sufficiently alleged the qualifying circumstance of treachery, thus:

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[22] *People v. Narca*, G.R. No. 108488, July 21, 1997, 275 SCRA 696, 709.

[23] G.R. No. 147201, January 15, 2004, 419 SCRA 659, 672.

[24] G.R. Nos. 144340-42, August 6, 2002, 386 SCRA 391, 395.

[25] Section 8. Designation of the Offense.— The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

"x x x, accused armed with a gun, with intent to kill, did then and there, willfully, unlawfully, feloniously, and **with treachery**, attack, assault and shot Nestor Esatcio, (sic) x x x." (Emphasis ours)

Not only was treachery sufficiently alleged, it was likewise proven beyond reasonable doubt by the evidence on record. It is a well-entrenched rule that treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[26]

In the instant case, Nestor Estacio was attacked from behind and assaulted without warning and provocation. Even when the already wounded Nestor fell on the ground, accused-appellant mercilessly fired several more shots at him. He obviously wanted to ensure the execution of the killing, without risk to himself, and deprive Nestor of any opportunity to retaliate or defend himself. The fact that accused-appellant brought a gun with him indicated that he made a deliberate and conscious adoption of the means to kill Nestor. Further, the autopsy conducted by Dr. Necessario revealed multiple gunshot wounds at the lower back area of the lumbar region of Nestor. This autopsy indubitably indicates that the shots were fired from behind on the unsuspecting victim. Clearly then, treachery or *alevosia* has been sufficiently established.

We, thus, sustain the conviction of Rene Rosas for the crime of murder as well as the penalty imposed upon him. Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. Accused-appellant was correctly sentenced to suffer *reclusion perpetua*, the lower of the two indivisible penalties, since there was no other aggravating circumstance attending the commission of the crime.[27]

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[26] *People v. Lab-eo*, G.R. No. 133438, January 16, 2002, 373 SCRA 461, 475.

[27] Article 61, Revised Penal Code.

We now come to the award of damages.

Conformably with existing jurisprudence, the heirs of Rene Rosas are entitled to civil indemnity in the amount of ₱50,000.00, which is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[28] Likewise, moral damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[29] Accused-appellant is also liable to pay exemplary damages in the sum of ₱25,000.00 in view of the presence of the qualifying aggravating circumstance of treachery.[30]

With respect to actual damages, the victim's widow, Arceli Estacio, testified that she spent a total of ₱40,000.00 as burial and funeral expenses but she failed to present *People v. Abrazaldo,*[31] we laid down the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of ₱25,000.00. Thus, in lieu of actual damages, temperate damages in the amount of ₱25,000.00 must be awarded to the heirs of Rene Rosas because although the exact amount was not proved with certainty, it was reasonable to expect that they incurred expenses for the coffin and burial of the victim.

WHEREFORE, the decision dated November 29, 2006 of the Court of Appeals in *CA-G.R. CR-HC No. 00301* is hereby *AFFIRMED.* Accused-appellant Rene Rosas is found *GUILTY* beyond reasonable doubt of the crime of Murder and sentenced

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[28] *People v. Opuran*, G.R. Nos. 147674-75, March 17, 2004, 425 SCRA 654, 673.

[29] *Ibid.*

[30] *Ibid.*

[31] G.R. No. 124392, February 6, 2003, 397 SCRA 137, 150.

to suffer the penalty of *reclusion perpetua*. He is hereby ordered to indemnify the heirs of Nestor Estacio the following: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages, (c) ₱25,000.00 as exemplary damages; and (d) ₱25,000.00 as temperate damages.

SO ORDERED.

Carpio,[*] *Corona, Azcuna,* and *Brion,*[**] *JJ.,* concur.

Puno, C.J., on official leave.

FIRST DIVISION

[G.R. No. 183696. October 24, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NELSON ARRAZ,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT ACCORDS GREAT RESPECT AND FULL WEIGHT TO THE TRIAL COURT'S FINDINGS, UNLESS THE TRIAL COURT OVERLOOKED SUBSTANTIAL FACTS WHICH COULD HAVE AFFECTED THE OUTCOME OF THE CASE. — [A]ppellant's flimsy denial cannot prevail over AAA's positive identification of appellant as the perpetrator of the crime. Moreover, appellant gravely failed to show material facts which the trial court overlooked or misunderstood and which could alter appellant's conviction. Well-settled is the rule that the Court accords great respect and full weight to the trial court's findings, unless the trial

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[*] Acting Chairperson of the First Division as per Special Order No. 527.

[**] Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 528.

court overlooked substantial facts which could have affected the outcome of the case.

2. CRIMINAL LAW; RAPE; ELEMENTS; DATE OF COMMISSION IS NOT AN ESSENTIAL ELEMENT OF THE CRIME. — [T]he Court sustains the lower courts in holding that the date of the commission of the rape is not an essential element of the crime. Even a variance of a few months between the time in the Information and that established by the evidence during the trial has been held not to constitute a serious error warranting the reversal of a conviction on that ground.

3. ID.; ID.; CAN BE COMMITTED ANYWHERE, ANYTIME. — [A]s the Court of Appeals ruled, lust does not respect time and place. There is no rule that rape can be committed only in seclusion. In several cases, the Court has found that venues of rape have been inside a house where there were other occupants; in a room adjacent to where the victim's family members were sleeping; or even in a room which the victim shared with the accused's sisters.

4. ID.; ID.; PHYSICAL RESISTANCE IS NOT AN ESSENTIAL ELEMENT OF RAPE. — AAA's failure to shout for help during the rape is not fatal to the charge of rape. Considering that at the time of the rape AAA was only 14 years old and that appellant is AAA's uncle, appellant undeniably exercised moral ascendancy over AAA and intimidated AAA into submission. Failure to shout or offer tenacious resistance did not make voluntary AAA's submission to appellant's lust. Besides, physical resistance is not an essential element of rape.

5. ID.; ID.; THERE IS NO UNIFORM BEHAVIOR EXPECTED OF VICTIMS AFTER BEING RAPED; CASE AT BAR. — [T]he Court agrees with the Court of Appeals in ruling that there is no uniform behavior expected of victims after being raped. Different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. In this case, AAA did not tell her grandmother about the rape incident because she firmly believed that her grandmother would side with appellant, being her favorite son. Instead, AAA deemed it right, under the circumstances, to report it to someone whom she believed to be a member of the NPA.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO,[*] *J.*:

This is an appeal from the 23 November 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02357. The Court of Appeals affirmed the 15 June 2006 Decision[2] of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur, in Criminal Case No. RTC'04-907 finding appellant Nelson Arraz guilty beyond reasonable doubt of qualified rape with the modifications that (1) the death penalty be reduced to *reclusion perpetua* without eligibility for parole; and (2) the awards of moral damages and exemplary damages be reduced to ₱50,000 and ₱25,000, respectively.

The prosecution charged appellant with raping his 14-year old niece in an Information that reads:

> That on or about the 20th day of April 2003, at around three o'clock in the morning in Sitio Libtong, Barangay Lupi, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused willfully, unlawfully, and feloniously through force and intimidation has carnal knowledge with her [sic] niece, [AAA],[3] fourteen years old, against her will, to her damage and prejudice.

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[*] Acting Chairperson of the First Division as per Special Order No. 527.

[1] *Rollo*, pp. 2-19. Penned by Associate Justice Edgardo F. Sundiam, with Acting Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Monina Arevalo-Zenarosa, concurring.

[2] CA *rollo*, pp. 16-29. Penned by Judge Freddie D. Balonzo.

[3] Per this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004" and its

The crime is committed with the following attendant aggravating/qualifying circumstances:

The victim is under eighteen years of age and the offender is a relative by consanguinity within the third civil degree.

ACTS CONTRARY TO LAW.[4]

Upon arraignment, appellant pleaded not guilty. During the pre-trial, appellant admitted that AAA is his niece. Thereafter, trial ensued.

The prosecution presented AAA, who was born on 2 January 1989 as shown in her birth certificate, and thus was only 14 years old when the rape happened. AAA testified that on 20 April 2003, she went to sleep at 8:00 in the evening. Then, at 3:00 a.m. of the following day, she was awakened because appellant was kissing her. Appellant held her hand and placed himself on top of her. AAA fought but appellant was much stronger than her. Appellant removed AAA's shorts and inserted his penis into her vagina which made her feel pain causing her to cry. Afterwards, appellant threatened to kill AAA if she would report what happened to her. AAA did not inform her grandmother about the rape because AAA believed that her grandmother would side with appellant, being her grandmother's favorite son. AAA instead reported the incident to someone whom she believed to be a member of the New People's Army (NPA) because she wanted appellant dead. The alleged member of the NPA turned out to be an officer of the Philippine Army who brought AAA to the Department of Social Welfare and Development of Tinambac.

The prosecution likewise presented Dr. Jane Perpetua Fajardo (Dr. Fajardo), Medico Legal Officer of the National Bureau of Investigation (NBI), who testified that she conducted a medico genital examination on AAA. Dr. Fajardo found an old healed

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implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead.

[4] *Rollo*, p. 3.

hymenal laceration at 6:00 o'clock position, which is most commonly caused by sexual intercourse.

The defense presented appellant and his mother as witnesses. Appellant denied the charges against him, stating, among others that at the time of the commission of the crime, he stayed at his house taking care of his sick wife, then tended to his carabao, and thereafter attended the reading of the *Pasyon*. However, appellant admitted that at around 12 midnight of 21 April 2003, he tried to kiss AAA's lips but nothing happened afterwards. Appellant claimed that he was tempted to kiss AAA because he saw her lying on a bed alone and he was drunk then. Appellant further alleged that AAA filed the present criminal case because she was probably angry at him for trying to kiss her on the lips.

Appellant's mother, Gloria Arraz, essentially testified that she did not notice anything unusual about AAA at around the time of the rape and that AAA did not inform her about the rape.

The trial court convicted appellant of rape defined and penalized under paragraph 1(a) of Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. The trial court pertinently ruled as follows:

> In the case at bar, the information alleges that the rape was committed "on or about the 20th day of April, 2003." In this regard, Section 11 of Rule 110 of the Revised Rules on Criminal Procedure provides, as follows:
>
> > "Sec. 11. Date of commission of the offense. — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.
>
> The discrepancy should likewise be disregarded because the accused testified and admitted that he went to the house where [AAA] was staying at 12 midnight of April 21, 2003 and that when he saw [AAA] lying in bed alone and being drunk at that time, he was tempted. He also admitted that he tried to kiss [AAA] on said date. x x x Moreover, such mistakes or inaccuracies are of no

moment as the factual issue now before this court is whether the rape incident happened or not. As emphatically enunciated by the Supreme Court in a number of cases, "in rape cases, the date is not an essential element of the crime and, therefore, need not be accurately stated."

x x x x x x x x x

Although the accused claims that he only tried to kiss [AAA], such denial crumbles in the face of the positive testimony of [AAA] and the physical evidence showing that sexual intercourse was committed on her. The physical evidence shows that she had an old hymenal laceration at 6:00 o'clock position, complete with edges rounded and non-coaptable. The hymenal orifice was wide (2.5 cm. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing injury.

x x x x x x x x x

The court finds the testimony of [AAA] clear and free from serious contradiction. Although it appears that she did not shout or cry out for help while the accused was trying to force himself upon her, this does not diminish her credibility. People react in different ways. x x x The reason given by [AAA] why she did not shout or cry for help was that she believed that her grandmother would side with the accused. x x x[5]

The dispositive portion of the 15 June 2006 Decision[6] of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur, reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of rape as defined and penalized under letter (a) paragraph 1 of Art. 266-A of the Revised Penal Code as amended by Rep. Act 8353 in relation to Art. 266-B thereof.

Accordingly, the accused NELSON ARRAZ is hereby sentenced to suffer the supreme penalty of DEATH, and to indemnify the

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[5] CA *rollo,* pp. 23-26.

[6] *Id.* at 16-29.

victim, [AAA], in the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.[7]

On appeal, appellant contended that the trial court erred in finding him guilty beyond reasonable doubt. He claimed that (1) there was a discrepancy in the date of the commission of the crime; (2) AAA did not display any unusual behavior after she was allegedly raped; (3) it was impossible to rape AAA considering that she was sharing the room with her grandmother who was only two meters away from her and was separated only by a curtain; and (4) AAA did not make an outcry when her grandmother was so near when the rape happened.

The Court of Appeals rejected appellant's contentions. The appellate court held that the "perceived discrepancy in the date of the commission of the rape is inconsequential." The date of the commission of the rape is not an essential element of the crime. The Court of Appeals went on to explain the discrepancy in the date by stating that the crime was committed in the early morning of 21 April 2003, which is already considered a new day or the next day after [AAA] went to sleep at around 8:00 o'clock in the evening of 20 April 2003.

The fact that AAA did not shout or make an outcry does not diminish her credibility, for such failure to shout for help does not negate rape. AAA was only 14 years and 3 months old at the time she was raped and is the niece of appellant. Thus, it cannot be denied that appellant exercised a great amount of influence and wielded authority over AAA.

The Court of Appeals also found unmeritorious appellant's claim of impossibility to commit the crime of rape in the presence of other persons. The presence of people has never deterred the commission of rape.

The Court of Appeals also held that there is no standard form of behavioral response when one is confronted by a shocking or a harrowing experience. AAA's reporting of the incident to

[7] *Id.* at 28.

someone she believed to be a member of the NPA, and not to her grandmother because appellant was the latter's favorite, may be considered a normal reaction.

The Court of Appeals gave credence to AAA's testimony rather than appellant's bare denial. AAA's testimony was simple, candid and straightforward.

The dispositive portion of the decision of the Court of Appeals reads:

> WHEREFORE, the Decision appealed from, convicting accused-appellant NELSON ARRAZ of the crime of qualified rape, is thereby AFFIRMED with the MODIFICATIONS that (1) the penalty of death be reduced to *reclusion perpetua* without eligibility to [sic] parole; and (2) the awards of moral damages and exemplary damages are reduced to ₱50,000.00 and ₱25,000.00, respectively.
>
> SO ORDERED.[8]

Hence, this appeal.

The sole issue in this case is whether appellant is guilty of rape defined and penalized under Article 266-A[9] in relation to Article 266-B[10] of the Revised Penal Code, as amended.

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[8] *Rollo*, p. 19.

[9] ART. 266-A. *Rape; When And How Committed.* — Rape Is Committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[10] ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

The appeal has no merit.

The lower courts did not err in giving credence to the testimony of AAA. AAA clearly and straightforwardly testified that appellant raped her, thus:

Q Aside from kissing you, what else did your *Tio* Nelson do to you?
A He held my hand and placed himself on top of me.

Q What did you do when you said your Tio Nelson got held [*sic*] of your hand and went on top of you?
A I fought him but he was much stronger than me.

Q While your Tio Nelson was on top of you, what action did he take after that?
A And he continued on kissing me.

Q What else did he do, aside from kissing you?
A He inserted his penis inside my vagina.

x x x x x x x x x

Q Awhile ago you said that the penis of Nelson Arraz was inserted in your vagina, kindly tell us what did you feel while you were in that situation?
A It was painful.

Q And what did you do since you feel painful [sic] in that situation?
A I cried.

Q Can you still remember for how long Nelson Arraz was on top of you, after Nelson Arraz moved on top of you what happened next?
A I could not remember, Sir.

Q And while Nelson Arraz inserted his penis into your vagina and he was on top of you, what did Nelson Arraz do?
A He continued on kissing me.[11]

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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;

x x x x x x x x x

[11] *Rollo*, pp. 15-16.

To support AAA's charge of rape, the prosecution presented the testimony of Dr. Fajardo, Medico Legal Officer of the NBI, who conducted a medico genital examination on AAA. Dr. Fajardo found an old healed hymenal laceration at 6:00 o'clock position. She stated that based on experience and studies, 90 to 95% of such lacerations are caused by sexual intercourse. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[12] Since AAA's clear, positive and straightforward testimony is consistent with Dr. Fajardo's medical findings, the prosecution sufficiently established the element of carnal knowledge.

While appellant admits kissing AAA on the lips around the time of the commission of the rape, appellant denies raping AAA. Appellant's flimsy denial cannot prevail over AAA's positive identification of appellant as the perpetrator of the crime. Moreover, appellant gravely failed to show material facts which the trial court overlooked or misunderstood and which could alter appellant's conviction. Well-settled is the rule that the Court accords great respect and full weight to the trial court's findings, unless the trial court overlooked substantial facts which could have affected the outcome of the case.[13] Appellant's claims involve minor or trifling matters that do not warrant a reversal of the decision of the lower courts.

First, the Court sustains the lower courts in holding that the date of the commission of the rape is not an essential element of the crime. Even a variance of a few months between the time in the Information and that established by the evidence during the trial has been held not to constitute a serious error warranting the reversal of a conviction on that ground.[14]

Second, as the Court of Appeals ruled, lust does not respect time and place. There is no rule that rape can be committed

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[12] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560.

[13] *People v. Montinola*, G.R. No. 178061, 31 January 2008, 543 SCRA 412.

[14] *People v. Soriano*, G.R. No. 172373, 25 September 2007, 534 SCRA 140, 146.

only in seclusion. In several cases, the Court has found that venues of rape have been inside a house where there were other occupants;[15] in a room adjacent to where the victim's family members were sleeping;[16] or even in a room which the victim shared with the accused's sisters.[17]

Third, AAA's failure to shout for help during the rape is not fatal to the charge of rape. Considering that at the time of the rape AAA was only 14 years old and that appellant is AAA's uncle, appellant undeniably exercised moral ascendancy over AAA and intimidated AAA into submission. Failure to shout or offer tenacious resistance did not make voluntary AAA's submission to appellant's lust.[18] Besides, physical resistance is not an essential element of rape.[19]

Fourth, the Court agrees with the Court of Appeals in ruling that there is no uniform behavior expected of victims after being raped. Different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[20] In this case, AAA did not tell her grandmother about the rape incident because she firmly believed that her grandmother would side with appellant, being her favorite son. Instead, AAA deemed it right, under the circumstances, to report it to someone whom she believed to be a member of the NPA.

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[15] *People v. Talaboc*, 326 Phil. 451 (1996) citing *People v. Guibao*, G.R. No. 93517, 15 January 1993, 217 SCRA 64, *People v. Dabon*, G.R. No. 102004, 16 December 1992, 216 SCRA 656, *People v. De los Reyes*, G.R. No. 85771, 19 November 1991, 203 SCRA 707, *People v. Viray*, No. L-41085, 8 August 1988, 164 SCRA 135.

[16] *People v. Talaboc*, 326 Phil. 451 (1996) citing *People v. Codilla*, G.R. Nos. 100720-23, 30 June 1993, 224 SCRA 104.

[17] *Id.* citing *People v. Villorente*, G.R. No. 100198, 1 July 1992, 210 SCRA 647.

[18] *People v. Alberio*, G.R. No. 152584, 6 July 2004, 433 SCRA 469, 475.

[19] *Id*.

[20] *People v. Talaboc*, 326 Phil. 451 (1996).

Considering that the Court finds no reversible error on the finding of appellant's guilt for the crime of rape, the Court of Appeals correctly imposed the penalty of *reclusion perpetua* without eligibility for parole, pursuant to Republic Act No. 9346.[21]

However, the Court modifies appellant's civil liability. He is still ordered to pay AAA ₱75,000 as civil indemnity and ₱25,000 as exemplary damages. The Court increases from ₱50,000 to ₱75,000 the award of moral damages in accordance with prevailing jurisprudence.[22]

WHEREFORE, the Court *AFFIRMS* the 23 November 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02357 with the *MODIFICATION* that the moral damages shall be ₱75,000.

SO ORDERED.

Corona, Azcuna, Leonardo-de Castro, and *Brion,*[**] *JJ.*, concur.

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[21] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[22] *People v. Crespo*, G.R. No. 180500, 11 September 2008; *People v. Dela Torre*, G.R. No. 176637, 6 October 2008; *People v. Dela Paz*, G.R. No. 177294, 19 February 2008, 546 SCRA 363, 386; *People v. Javier*, G.R. No. 172970, 19 February 2008, 546 SCRA 328, 333; *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[**] As replacement of Chief Justice Reynato S. Puno who is on official leave per Special Order No. 528.

THIRD DIVISION

[A.M. No. RTJ-07-2050. October 29, 2008]
(Formerly OCA I.P.I. No. 07-2563-P)

SPOUSES ARLEEN and LORNA OLIVEROS, *complainants, vs.* **HON. DIONISIO C. SISON, Acting Presiding Judge, Regional Trial Court, Branch 74, Antipolo City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT OF COURT, DEFINED. — Contempt of court is defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect, or to interfere with or prejudice parties-litigants or their witnesses during litigation. It is defined as disobedience to the Court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.

2. ID.; CIVIL PROCEDURE; PARTS OF PLEADING; CERTIFICATION AGAINST FORUM SHOPPING; RATIONALE; NON-COMPLIANCE WITH ANY OF THE UNDERTAKINGS THEREIN SHALL CONSTITUTE INDIRECT CONTEMPT OF COURT. — In particular, non-compliance with any of the undertakings in the Certification against Forum Shopping shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. The rationale for the requirement of a certification against forum shopping is to apprise the Court of the pendency of another action or claim involving the same issues in another court, tribunal or quasi-judicial agency, and thereby precisely avoid the forum shopping situation. The rule is well settled that a court should be informed of the pendency of a similar proceeding a party has filed. The responsibility cannot be taken lightly because of the harsh penalties the law prescribes for non-compliance.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; RESORT TO AND EXHAUSTION OF JUDICIAL REMEDIES, AS WELL AS THE ENTRY OF JUDGMENT IN THE CORRESPONDING ACTION OR PROCEEDING, ARE PRE-QUISITES FOR THE TAKING OF OTHER MEASURES AGAINST THE PERSON OF THE JUDGE CONCERNED, WHETHER OF CIVIL, ADMINISTRATIVE, OR CRIMINAL NATURE. — The deleterious effects of complainants' act become more apparent in light of this Court's consistent ruling that disciplinary proceedings and criminal actions against a judge are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the person of the judge concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed. For obviously, if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against him at all.

APPEARANCES OF COUNSEL

Archimedes G. Buencamino for complainants.

R E S O L U T I O N

NACHURA, *J.*:

In a Decision[1] dated June 27, 2007, this Court found Judge Dionisio C. Sison, Acting Presiding Judge, Regional Trial Court of Antipolo City, Branch 74, guilty of gross ignorance of the law for which he was fined ₱10,000.00. We held therein that Judge Sison failed to abide by the requirements under the Revised

[1] *Rollo,* pp. 82-91.

Rules on Civil Procedure in citing herein complainants, spouses Arleen and Lorna Oliveros, for indirect contempt.

Judge Sison moved for reconsideration of the Decision. On March 14, 2008, this Court issued a Resolution[2] denying Judge Sison's Motion for Partial Reconsideration for lack of merit.

In that same Resolution, this Court found that complainants, in their Comment to Judge Sison's Motion for Reconsideration, admitted that they failed to inform this Court of a Petition for *Certiorari*[3] they filed before the Court of Appeals questioning the same contempt order which formed the basis of the instant administrative case they filed before this Court, pursuant to Section 5, Rule 7, of the Revised Rules on Civil Procedure.[4] They claimed that they were not aware of the requirement to so inform this Court.

This Court, however, found that —

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[2] *Id*. at 160-167.

[3] CA-G.R. SP No. 97892.

[4] SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading, but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission, of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

While that may have been true, their argument becomes untenable when seen in the light of their subsequent actions. The Verification/ Certification of the Petition for *Certiorari* before the CA clearly shows that both complainants signed the same. Thus, they are presumed to have read its contents, or since they are supposedly assisted by counsel, that the latter explained the contents thereof. This should have already made them aware of the requirement to inform the Court of the filing of the case before the CA considering that in the latter case, they are praying for the nullification of the very same Order for which they were seeking administrative sanctions against respondent judge before this Court. Yet even in the Petition for Review itself, they failed to disclose that they had already filed an administrative case against Judge Sison before this Court arising from the same order they were questioning therein. Thus, there appears a very real possibility of the pernicious effect sought to be prevented by the rules requiring the Certification against Forum Shopping would arise. Accordingly, the complainants could be held liable for contempt of this Court.

Hence, complainants were directed to show cause,[5] within ten (10) days from receipt of the Resolution, why they should not be cited for contempt for violation of Section 5, Rule 7, of the Revised Rules on Civil Procedure. Records of the case show that complainants acknowledged receipt of the Resolution on April 1, 2008,[6] giving them until April 11, 2008 to comply with the Court's directive. They failed to do so.

Thus, for violation of Rule 7, Section 5 of the Revised Rules on Civil Procedure, complainants are held guilty of indirect contempt of this Court.

Contempt of court is defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect, or to interfere with or prejudice parties-litigants or their witnesses during litigation. It is defined as disobedience to the Court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct

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[5] *Rollo*, p. 166.

[6] Per Registry Return Receipt, *id*. at 167. (Dorsal side.)

as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[7]

In particular, non-compliance with any of the undertakings in the Certification against Forum Shopping shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions.[8] The rationale for the requirement of a certification against forum shopping is to apprise the Court of the pendency of another action or claim involving the same issues in another court, tribunal or quasi-judicial agency, and thereby precisely avoid the forum shopping situation.[9]

The rule is well settled that a court should be informed of the pendency of a similar proceeding a party has filed. The responsibility cannot be taken lightly because of the harsh penalties the law prescribes for non-compliance.[10]

The act of complainants in not informing the Court of the filing of the case before the CA is no small thing that can be brushed aside simply because this Court has already meted Judge Sison with an appropriate sanction. Respondent's error does not negate complainants' culpability. Those who seek relief from the courts must not be allowed to ignore basic legal rules and abuse court processes in their efforts to vindicate their rights.

The deleterious effects of complainants' act become more apparent in light of this Court's consistent ruling that disciplinary proceedings and criminal actions against a judge are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the

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[7] *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616, 627. (Citations omitted.)

[8] Revised Rules of Civil Procedure, Rule 7, Sec. 5; *supra* note 4.

[9] *Peña v. Aparicio*, A.C. No. 7298, June 25, 2007, 525 SCRA 444, 454.

[10] *Leonidas v. Supnet*, 443 Phil. 53, 66 (2003).

person of the judge concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.[11] For obviously, if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against him at all.[12]

Parties-litigants abuse court processes by prematurely resorting to administrative disciplinary action, even before the judicial issues involved have been finally resolved.[13]

Rules of procedure are required to be followed, except only when, for the most persuasive of reasons, they may be relaxed to relieve the litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[14] We find no reason in this case to relax the Rules in complainants' favor.

WHEREFORE, this Court finds spouses Arleen and Lorna Oliveros *GUILTY* of *INDIRECT CONTEMPT* and are hereby ordered to pay a *FINE* of ₱*10,000.00,* payable to this Court within a non-extendible period of ten (10) days from receipt of this

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[11] *Caguioa v. Laviña*, 398 Phil. 845, 853-854 (2000), citing *Flores v. Abesamis*, 275 SCRA 302 (1997); *Maylas, Jr. v. Sese*, A.M. No. RTJ-06-2012, August 4, 2006, 497 SCRA 602, 607; *Rivera v. Mendoza*, A.M. No. RTJ-06-2013, August 4, 2006, 497 SCRA 608, 614-615; *Request to Designate Another Judge to Try and Decide Criminal Case No. 3713 (SF-99) Pending Before the MCTC, San Fabian-San Jacinto, Pangasinan*, 419 Phil. 1, 4-5 (2001); *Portic v. Villalon-Pornillos*, A.M. No. RTJ-02-1717, May 28, 2004, 430 SCRA 29, 39; *Macachor v. Beldia*, 451 Phil. 849, 854 (2003).

[12] *Equitable PCI Bank, Inc. v. Laviña*, A.M. No. RTJ-06-2001, August 16, 2006, 499 SCRA 8, 18, citing *Visitacion v. Libre*, 459 SCRA 398, 407 (2005) and *De Guzman v. Pamintuan*, 405 SCRA 22, 26 (2003).

[13] *Caguioa v. Laviña, supra* note 11; *Cruz v. Iturralde*, 450 Phil. 77, 85 (2003).

[14] *Gabriel v. Court of Appeals*, G.R. No. 149909, October 11, 2007, 535 SCRA 569, 577, citing *Ortiz v. CA*, 360 Phil. 95, 100 (1998).

Resolution, with a *WARNING* that a repetition of the same or similar offense shall merit a more severe penalty.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Chico-Nazario, JJ.,* concur.

SECOND DIVISION

[G.R. No. 157707. October 29, 2008]

MARCIAL FAJARDO, *petitioner, vs.* **HON. COURT OF APPEALS, RUBY GAMBOA *VDA. DE* DIZON, *ET AL.*, MYRNA ILAGAN *VDA. DE* MANGUNE, *ET AL.*, CAPT. GENER MANGUNE, and OLIVIA PAYAD *VDA. DE* GUTIERREZ, *ET AL.*,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION; INDISPENSABLE CONDITION. — Time and again, we have ruled that the filing of a motion for reconsideration is an indispensable condition before resorting to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any. While this rule admits of exceptions, none is present in this case. It bears stressing that he who seeks a writ of *certiorari* must apply for it in a manner strictly in accordance with the provisions of the law and the Rules. The liberal

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[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 531 dated October 20, 2008.

[**] Additional member in lieu of Associate Justice Ruben T. Reyes per Special Order No. 521 dated September 29, 2008.

construction of the Rules should not be a remedy for all procedural maladies. This Court will not tolerate wanton disregard of the procedural rules under the guise of liberal construction.

2. ID.; ID.; ID.; PETITIONER MUST ALLEGE AND PROVE EXISTENCE OF GRAVE ABUSE OF DISCRETION. — A special civil action for *certiorar*i under Rule 65 is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.

3. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; CONSTRUED. — Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case.

APPEARANCES OF COUNSEL

Enrico V. Fernando Law Offices for petitioner.

Mendoza Mendoza and Bautista Law Office for private respondent.

D E C I S I O N

QUISUMBING, *Acting C.J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court, assailing the Decision[1] dated January 31, 2003 of the Court of Appeals in CA-G.R. CV No. 48419.

It stemmed from four civil cases involving damages filed by the heirs of Alexander T. Dizon, Eduardo and Elizabeth P. Mangune, and Mario C. Gutierrez (the four victims), who died in a vehicular accident along the North Expressway in Angeles City. These cases, docketed at the Regional Trial Court (RTC) of Angeles City, Branch 57 as Civil Cases Nos. 5215,[2] 5216,[3] 5217[4] and 5218,[5] were filed against Perfecto Dacasin and petitioner Marcial Fajardo, being the driver and owner, respectively, of the truck which allegedly sideswiped the jeep carrying the victims.

A criminal complaint for reckless imprudence resulting in homicide and damage to property was also filed against Dacasin as a result of the incident. The criminal case and the above-mentioned civil cases were consolidated and tried jointly, but the trial court nevertheless resolved the criminal case separately, finding Dacasin guilty beyond reasonable doubt of the crime charged.[6] The conviction was affirmed by the Court of Appeals in CA-G.R. CR No. 17302.[7]

As regards the civil aspect, SPO2 Romulo M. Bagsic testified that at around 6:15 p.m. of October 12, 1987, he received a

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[1] CA *rollo*, pp. 91-99. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Jose L. Sabio, Jr. and Amelita G. Tolentino, concurring.

[2] Records, Vol. I, pp. 5-9.

[3] Records, Vol. II, pp. 5-8.

[4] Records, Vol. III, pp. 4-7.

[5] Records, Vol. IV, pp. 1-4.

[6] CA *rollo*, pp. 37-44. Penned by Judge Mariano C. Del Castillo.

[7] *Rollo*, p. 15.

phone call regarding a vehicular accident that took place 500 meters away from Magalang/Angeles City along the North Expressway. Bagsic went to the scene of the incident and saw the four victims sprawled on the right outer lane of the expressway, on the lane bound for Manila. The owner-type jeep of the four victims had fallen into the canal by the side of the road, and a six-wheeler truck rested on its side facing northeast. A portion of the jeep was still attached to the body of the said truck.[8]

Bagsic prepared his investigation report based on the location of the two vehicles and the dead bodies, the debris, and the skid marks of the vehicle for the possible point of impact. Afterwards, Bagsic concluded that the jeep was sideswiped by the truck.[9]

Upon further investigation, Bagsic found at the truck's compartment a gasoline receipt indicating its owner to be a certain M. Fajardo. The lady attendant at the Caltex Gas Station of Balagtas, Bulacan confirmed to Bagsic that the said M. Fajardo is their customer.[10] Petitioner, during trial, acknowledged ownership of the subject truck, an Isuzu six-wheeler truck with license Plate No. CCF-330.

Bagsic further testified that he had the vehicles and dead bodies photographed by a certain Rolledo Sanchez, a member of the Pampanga Press Club. The jeep was then towed to Angeles City, while the towing of the truck was left to the CDCP, the authority in charge at the North Expressway. However, when Bagsic returned to the scene of the incident, the truck was nowhere to be found. The CDCP disclaimed any knowledge as to the whereabouts of the truck.[11]

In defense, both petitioner and Dacasin denied that it was their six-wheeler truck which figured in the said incident involving

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[8] Folder of Exhibits, Vol. I, pp. 22, 26 and 53.

[9] *Id.* at 26 and 31.

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

[11] *Id.* at 39, 49-51 and 63.

the deaths of the four victims, but they admit that at around the same time and place, their truck met an accident when it fell on its side after allegedly running over a hole on the expressway. This alleged accident, as narrated by Dacasin, happened at around 4:00 o'clock in the afternoon of October 12, 1987. After the accident, he left at 5:00 o'clock in the afternoon and proceeded to Nepo, Angeles City. Then, at around 9:00 o'clock in the evening, he proceeded to Bulacan. He left Bulacan at 11:30 o'clock in the evening, and reported to his employer (petitioner) around 12:00 o'clock midnight. Afterwards, he left for Pangasinan.[12]

Dacasin admitted not responding to the subpoena sent by the prosecutor's office asking for his counter affidavit, and added that he was arrested on June 5, 1991, after four years of hiding. Dacasin claimed that he executed a *Sinumpaang Salaysay* in the presence of his wife at the Mabalacat Police Station, but averred that he was forced to sign the same.[13]

On June 30, 1994, the trial court rendered its decision[14] finding petitioner and Dacasin liable for damages. Upon review, the Court of Appeals affirmed the trial court's decision and adjudged double costs against petitioner and Dacasin.

Claiming to have no other plain, speedy, or adequate remedy, petitioner now comes before us, contending:

THAT THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT AFFIRMED THE SUBJECT DECISION OF THE REGIONAL TRIAL COURT OF ANGELES CITY, BRANCH 57.[15]

Simply put, the issue is: Did the Court of Appeals commit grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the trial court's decision?

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[12] CA *rollo*, pp. 39-40.

[13] *Id.* at 40.

[14] *Id.* at 45-60.

[15] *Rollo*, p. 5.

Petitioner contends that the findings of the Court of Appeals were based on conjectures as there was no eyewitness when the incident happened. Petitioner imputes grave abuse of discretion on the part of the Court of Appeals in giving credence to the testimony of police investigator Bagsic, the sole witness for the respondents. Also, petitioner claims that the award of damages against them is unwarranted and excessive. Petitioner likewise maintains that it was not his truck that was involved in the incident. However, assuming that it was indeed his truck that got involved in the incident, petitioner is absolved from liability as he was not in the truck when the incident occurred, and that he exercised the due diligence required by law.[16]

After due consideration of the contentions and submissions in this case, we are in agreement that the petition lacks merit.

At the outset, in our view, this case warrants an outright dismissal. Time and again, we have ruled that the filing of a motion for reconsideration is an indispensable condition before resorting to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any.[17] While this rule admits of exceptions,[18] none is present in this case.

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[16] *Id.* at 8-9.

[17] *Metro Transit Organization, Inc. v. Court of Appeals*, G.R. No. 142133, November 19, 2002, 392 SCRA 229, 235.

[18] *Id.* at 236.

The following have been recognized as exceptions to the rule:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
(d) where, under the circumstances, a motion for reconsideration would be useless;
(e) where petitioner was deprived of due process and there is extreme urgency for relief;

The records show that the January 31, 2003 Decision of the Court of Appeals was received by petitioner on February 12, 2003. Instead of filing a motion for reconsideration, petitioner filed before this Court a petition for *certiorari* under Rule 65 on April 14, 2003. In doing so, petitioner did not afford the Court of Appeals an opportunity to rectify its alleged errors. Petitioner did not even attempt to explain why he was unable to file a motion for reconsideration within the reglementary period or even explain why the instant case is an exceptional one.

It bears stressing that he who seeks a writ of *certiorari* must apply for it in a manner strictly in accordance with the provisions of the law and the Rules.[19] The liberal construction of the Rules should not be a remedy for all procedural maladies. This Court will not tolerate wanton disregard of the procedural rules under the guise of liberal construction.[20]

In addition, petitioner adopted the wrong remedy in bringing this case before us. Instead of filing a petition for *certiorari* under Rule 65 of the Rules of Court, petitioner should have filed a petition for review on *certiorari* under Rule 45.

Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case.[21]

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
(g) where the proceedings in the lower court are a nullity for lack of due process;
(h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and
(i) where the issue raised is one purely of law or where public interest is involved.

[19] *Tower Industrial Sales v. Court of Appeals*, G.R. No. 165727, April 19, 2006, 487 SCRA 556, 569.

[20] *Mercado v. Court of Appeals*, G.R. No. 150241, November 4, 2004, 441 SCRA 463, 470.

[21] *Id.* at 469.

On the other hand, a special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[22] Such is not the case here.

The assailed Court of Appeals' decision admitting in evidence the documents presented by respondents and giving weight to the testimonies of respondents' witness, if erroneous, involves a mere error of judgment and not one of jurisdiction.[23] Where the real issue involves the wisdom or legal soundness of the decision — not the jurisdiction of the court to render said decision — the same is beyond the province of a petition for *certiorari* under Rule 65.[24]

WHEREFORE, the petition is *DISMISSED* for lack of merit. The Decision dated January 31, 2003 of the Court of Appeals in CA-G.R. CV No. 48419 is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[22] *People v. Sandiganbayan*, G.R. Nos. 158780-82, October 12, 2004, 440 SCRA 206, 212.

[23] See *Deutsche Bank Manila v. Chua Yok See*, G.R. No. 165606, February 6, 2006, 481 SCRA 672, 693.

[24] *Estrera v. Court of Appeals*, G.R. Nos. 154235-36, August 16, 2006, 499 SCRA 86, 94 citing *People v. Court of Appeals*, G.R. No. 142051, February 24, 2004, 423 SCRA 605, 613.

THIRD DIVISION

[G.R. No. 160240. October 29, 2008]

WOODRIDGE SCHOOL (now known as WOODRIDGE COLLEGE, INC.), *petitioner, vs.* **JOANNE C. PE BENITO and RANDY T. BALAGUER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; PURPOSE. — Time and again, we have said that the lack of verification is merely a formal defect that is neither jurisdictional nor fatal. In a proper case, the court may order the correction of the pleading, or act on the unverified pleading, if the attending circumstances are such that the rule may be dispensed with in order to serve the ends of justice. It should be stressed that rules of procedure were conceived and promulgated to effectively aid the court in the dispensation of justice. Verification is mainly intended to secure the assurance that the allegations in the petition are done in good faith or are true and correct and not mere speculation.

2. ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; STRICTLY COMPLIED WITH; EXCEPTIONS. — As to the certification against forum shopping, the CA correctly relaxed the Rules in order to serve the ends of justice. While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs or petitioners in a case and the signature of only one of them is insufficient, this Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with absolute literalness as to subvert its own ultimate and legitimate objective. Strict compliance with the provisions regarding the certificate of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not, however, interdict substantial compliance with its provisions under justifiable circumstances. In fact, we have relaxed the rules in a number of cases for two compelling reasons: social justice considerations and the apparent merit of the petition.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYEE; DEFINED. — A probationary employee is one who, for a given period of time , is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. The word "probationary," as used to describe the period of employment, implies the purpose of the term or period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.

4. ID.; ID.; ID.; ID.; ENJOY SECURITY OF TENURE DURING THEIR PROBATIONARY EMPLOYMENT BUT LOSE THAT SECURITY OF TENURE UPON EXPIRATION OF THEIR CONTRACT OF EMPLOYMENT. — Probationary employees enjoy security of tenure in the sense that during their probationary employment, they cannot be dismissed except for cause or when he fails to qualify as a regular employee. However, upon expiration of their contract of employment, probationary employees cannot claim security of tenure and compel their employers to renew their employment contracts. In fact, the services of an employee hired on probationary basis may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. There is nothing that would hinder the employer from extending a regular or permanent appointment to an employee once the employer finds that the employee is qualified for regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground.

5. ID.; ID.; ID.; LEGAL DISMISSAL; REQUIREMENT OF SUBSTANTIAL AND PROCEDURAL DUE PROCESS. — The Labor Code commands that before an employer may legally dismiss an employee from the service, the requirement of

substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes.

6. ID.; ID.; ID.; MISCONDUCT; MUST HAVE BEEN PERFORMED WITH WRONGFUL INTENT. — Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. The misconduct to be serious within the meaning of the Act, must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the work of the employee to constitute just cause for his separation. *It is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.*

7. ID.; ID.; ID.; DISMISSAL; IN THE CASE AT BAR, PETITIONER FAILED TO COMPLY WITH THE REQUIREMENT OF SUBSTANTIAL DUE PROCESS IN TERMINATING THE EMPLOYMENT OF RESPONDENTS. — The totality of the acts of respondents cannot be characterized as "misconduct" under the law, serious enough to warrant the severe penalty of dismissal. This is especially true because there is no finding of malice or wrongful intent attributable to respondents. We quote with approval the CA's ratiocination in this wise: Petitioners [respondents herein], along with their colleagues, initiated the dialogue and brought the above issues to the school authorities but the School Principal's reaction was far from what the teachers expected. Instead of taking serious concern and properly addressing the teachers' grievances as expressed in the Manifesto, Mrs Palabrica got angry and hysterical accusing the petitioners [respondents] of malice and bad faith and even threatened to dismiss them. Petitioners' [respondents'] subsequent media expose and filing of a formal complaint was necessitated by private respondents' [petitioners'] inaction and refusal to heed their legitimate complaint. Being but a legitimate exercise of their rights as such teachers/ educators and as citizens, under the circumstances, We cannot readily impute malice and bad faith on the part of the petitioners

[respondents] who, in fact, risked such the harsh consequence of loss of their job and non-renewal of their probationary employment contract just so the issue of the NEAT/NSAT anomaly involving their school would be ventilated in the proper forum as to compel or somehow pressure not only their school but more important, the government's education officials at the DECS to undertake proper and urgent measures. Hardly would such acts in relation to a matter impressed with public interest— *i. e.*, the integrity of the NEAT/NSAT process as a tool designed by the DECS to measure or gauge the achievement level of pupils and students in the school nationwide — be considered as showing moral depravity or ill will on the part of the petitioners. x x x In light of this disquisition, it is settled that petitioner failed to comply with the requirement of substantial due process in terminating the employment of respondents.

8. ID.; ID.; ID.; ID.; REQUISITES FOR THE PROCEDURAL ASPECT OF LAWFUL DISMISSAL. — In the termination of employment, the employer must (a) give the employee a written notice specifying the ground or grounds of termination giving to said employee reasonable opportunity within which to explain his side; (b) conduct a hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) give the employee a written notice of termination indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.

9. ID.; ID.; PREVENTIVE SUSPENSION; WHEN PROPER, CASE AT BAR. — The law is clear on this matter. While the employer may place the worker concerned under preventive suspension, it can do so only if the latter's continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers. In this case, the grounds relied upon by petitioner in placing respondents under preventive suspension were the alleged violation of school rules and regulations on the wearing of uniform, tardiness or absence, and maliciously spreading false accusations against the school. These grounds do not, in any way, pose a threat to the life or property of the school, of the teachers or of the students and

their parents. Hence, we affirm the CA's conclusion that respondents' preventive suspension was illegal.

10. ID.; ID.; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYEES; IF NOT EXTENDED NEW APPOINTMENTS ARE NOT ENTITLED TO REINSTATEMENT AND BACKWAGES; CASE AT BAR. — As probationary employees, respondents' security of tenure is limited to the period of their probation — for Pe Benito, until June 2001 and for Balaguer, June 2002. As they were no longer extended new appointments, they are not entitled to reinstatement and full backwages. Rather, Pe Benito is only entitled to her salary for her 30-day preventive suspension. As to Balaguer, in addition to his 30-day salary during his illegal preventive suspension, he is entitled to his backwages for the unexpired term of his contract of probationary employment.

11. ID.; ID; ID.; DISMISSAL; AWARD OF MORAL DAMAGES AND EXEMPLARY DAMAGES, REQUISITES FOR AWARD. — A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud; or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner. The award of said damages cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. It is necessary that additional facts be pleaded and proven that the act of dismissal was attended by bad faith, fraud, *et al.*, and that social humiliation, wounded feelings and grave anxiety resulted therefrom.

APPEARANCES OF COUNSEL

De La Rosa and Nograles for petitioner.
Pro-Labor Legal Assistance Center for respondents.

D E C I S I O N

NACHURA, *J.*:

This 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 June 30, 2003 and its Resolution[2] dated September 26, 2003 in CA-G.R. SP No. 75249. The assailed decision in turn set aside the Resolution[3] of the National Labor Relations Commission (NLRC) dated June 28, 2002 in NLRC Case No. RAB-IV-3-13593-01-C (CA No. 030579-02).

The factual and procedural antecedents follow:

Petitioner Woodridge School is a private educational institution located at Woodwinds Village, Molino 6, Bacoor, Cavite. Respondents Joanne C. Pe Benito (Pe Benito) and Randy T. Balaguer (Balaguer) were hired as probationary high school teachers effective June 1998 and June 1999, respectively.[4] Their contracts of employment covered a three (3) year probationary period. Pe Benito handled Chemistry and Physics while Balaguer taught Values Education and Christian Living.[5]

On February 19, 2001, respondents, together with twenty other teachers, presented petitioner with a Manifesto Establishing Relevant Issues Concerning the School[6] raising various issues which they wanted addressed, among which were:

I. NSAT/NEAT ANOMALY:

We emphatically condemn the school's grave act of wrongdoing when it involved itself on the NSAT and NEAT anomaly. We demand

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[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Elvi John S. Asuncion and Mario L. Guariña III, concurring; *rollo*, pp. 47-61.

[2] *Rollo*, pp. 63-65.

[3] *Id.* at 256-270.

[4] Evidenced by their respective Contracts of Employment, *id.* at 92-93.

[5] *Rollo*, p. 48.

[6] *Id.* at 132-134.

that we be given assurance "in writing" that this illegal and immoral conduct will never happen again, otherwise, we will be obligated as moral guardians of the youth to make more proper action.

II. TEACHER'S RIGHT FOR A DUE PROCESS:

We felt betrayed when one of our former colleague[s] who was then regularly employed and was perceived to be harmless and an asset to the school, for no solid basis or apparent investigation conducted by the school, was suddenly expelled from his job.

x x x x x x x x x

III. ISSUANCE OF INDIVIDUAL CONTRACTS:

We wonder until now even after a number of years have already passed, our copies of individual contracts with the school have not yet been furnished to us. We demand that this legal document will be (sic) issued to us for job security and other legal purposes it may serve.

We also demand that AN APPOINTMENT OF PERMANENCY shall be (sic) given to a permanent teacher from the time the teacher is qualified to be permanent based on the duly set terms/standards of permanency of the school.

IV. NON-CLEAR-CUT SCHOOL POLICIES:

It has been observed and experienced from the past school years and until the present that there are a lot of inconsistencies regarding the school's policies like:

A. Changing of:

- The narrative forms of students
- Grades, and
- Behavioral rating sheets

With these experiences, the teachers felt cheated and that these affect (sic) their sense of worth and credibility. We then ask that the school should as always respect what the teachers deemed to be right and just fitting for the students. After all, the teachers are the ones meeting and facing the students and they know what is due to the students better that (sic) anyone else in the school.

B. Others.[7]

[7] *Id.* at 132-133.

A confrontation between the school administrators and the concerned teachers was held, but no settlement was arrived at.

For failure of the parties to resolve the issues, especially the alleged NSAT/NEAT anomaly, respondents filed a formal complaint against petitioner with the Department of Education, Culture and Sports (DECS)[8] requesting the latter to undertake a formal investigation, institute appropriate charges, and impose proper sanctions against petitioner.[9] During the pendency of the DECS case, and for lack of a positive action from petitioner, respondents appeared on television and spoke over the radio on the alleged NEAT/NSAT anomaly.

On February 28, 2001, petitioner sent two separate Memoranda[10] to respondents placing them under preventive suspension for a period of thirty days on the following grounds: 1) uttering defamatory remarks against the school principal in the presence of their co-teachers; 2) announcing to the students and teachers their alleged immediate termination from service; 3) tardiness; 4) spreading false accusations against petitioner; 5) absence without official leave; and 6) appearing on television and speaking over the radio to malign petitioner. In the same memoranda, respondents were required to explain in writing within seventy-two (72) hours why they should not be terminated from their employment. This prompted respondents to commence an action for illegal suspension before the NLRC. The case was docketed as NLRC NCR CASE NO. RAB-IV-3-13593-01-C.

On March 19, 2001, petitioner issued respondents their Notice of Termination,[11] each to take effect similarly on March 31, 2001, citing the foregoing grounds. In addition, petitioner informed respondents that they did not qualify as regular employees for their failure to meet the performance standards made known to them at the start of their probationary period.

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[8] Now Department of Education.

[9] *Rollo*, pp. 135-136.

[10] *Id.* at 100-103.

[11] *Id.* at 105-108.

Respondents then amended their initial complaint, to include illegal dismissal.

After the submission of the parties' position papers, on November 29, 2001, Labor Arbiter Vicente R. Layawen rendered a Decision dismissing the complaint.[12] He concluded that the termination of the respondents' probationary employment was justified because of their failure to submit vital teaching documents. Specifically, Pe Benito failed to submit her day book/lesson plans; while Balaguer failed to submit the subject syllabi and he had no record of class requirements as to quizzes, seatworks, homeworks, and recitation which were supposed to be the bases in rating the students' performance.[13] More importantly, the Labor Arbiter found respondents guilty of serious misconduct warranting their dismissal from service because of maliciously spreading false accusation against the school through the mass media. These acts, according to the Labor Arbiter, made them unfit to remain in the school's roster of teachers.[14] The Labor Arbiter also validated the preventive suspension of respondents for their having used the classroom as venue in spreading uncorroborated charges against petitioner, thus posing a serious threat to petitioner's business and reputation as a respectable institution.[15]

On appeal to the NLRC, the Commission affirmed[16] the Labor Arbiter's disposition in its entirety. The Commission concluded that respondents' acts, taken together, constitute serious misconduct, warranting their dismissal from service.

Aggrieved, respondents elevated the matter to the CA in CA-G.R. SP No. 75249. The CA granted the petition and set aside the NLRC ruling in a decision, the dispositive portion of which reads:

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[12] CA *rollo*, pp. 35-43.

[13] *Id.* at 41.

[14] *Id.* at 41-43.

[15] *Id.* at 43.

[16] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring; *id.* at 45-58.

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. Consequently, the assailed Resolutions of public respondent NLRC are hereby SET ASIDE and a new one is hereby entered declaring the thirty (30)-day suspension of petitioners on February 28, 2001 as illegal and ordering private respondent Woodridge School to pay to both petitioners Joanne C. Pe Benito and Randy T. Balaguer their salaries and benefits accruing during said period of illegal suspension. Woodridge School is also ordered to pay to petitioner Balaguer back wages for the period April 1, 2001 up to March 31, 2002. Finally, it is further ordered to pay each of the petitioners the sums of ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages and attorney's fees equivalent to ten percent (10%) of the total amount due.

No pronouncement as to costs.

SO ORDERED.[17]

The appellate court declared the preventive suspension of respondents invalid because it was based on the alleged violation of school regulations on the wearing of uniform, tardiness or absence, and maliciously spreading false accusations against the school, grounds that do not pose a serious threat to the life or property of the employer or of the workers.[18] Contrary to the Labor Arbiter and the Commission's findings, the CA concluded that respondents' acts do not constitute serious misconduct. Respondents' act of exposing the alleged NSAT/NEAT anomaly, as well as raising the other issues haunting the school administration, only indicates their concern for the integrity of the government examination and of the school. The use of the mass media was simply the respondents' response to the petitioner's inaction on their grievances.[19] No bad faith could be attributed to respondents in acting the way they did.

The appellate court likewise refused to sustain petitioner's contention that respondents failed to qualify for permanent employment, as there was no sufficient evidence to prove the

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[17] *Rollo*, pp. 60-61; p. 507.

[18] *Id.* at 53-54; pp; 507-508.

[19] *Id.* at 55-59.

same.[20] The appellate court emphasized that because respondents are probationary employees, legal protection extends only to the period of their probation.[21] The dismissal breached their probationary employment, and being tainted with bad faith, the court upheld the award of moral and exemplary damages.[22]

Aggrieved, petitioner comes before this Court in this petition for review on *certiorari*, raising the sole issue of:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN GRANTING RESPONDENTS' PETITION FOR *CERTIORARI* AND IN SETTING ASIDE THE FINDINGS OF BOTH THE NLRC AND THE LABOR ARBITER *A QUO*.[23]

We deny the petition.

Petitioner asserts that the CA should have outrightly dismissed the petition, because the verification and certificate of non-forum shopping was signed by only one of the respondents, without the authority of the other.[24]

Time and again, we have said that the lack of verification is merely a formal defect that is neither jurisdictional nor fatal. In a proper case, the court may order the correction of the pleading, or act on the unverified pleading, if the attending circumstances are such that the rule may be dispensed with in order to serve the ends of justice. It should be stressed that rules of procedure were conceived and promulgated to effectively aid the court in the dispensation of justice.[25] Verification is mainly intended to secure the assurance that the allegations in the petition are done in good faith or are true and correct and not mere speculation.[26]

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[20] *Id.* at 59.

[21] *Id.* at 60.

[22] *Id.*

[23] *Id.* at 407.

[24] *Id.* at 425-428.

[25] *Ballao v. Court of Appeals*, G.R. No. 162342, October 11, 2006, 504 SCRA 227, 233.

[26] *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries*

In the instant case, this requirement was substantially complied with when one of the petitioners (respondents herein), who undoubtedly had sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it. Indeed, the Court has ruled in the past that a pleading required by the Rules of Court to be verified may be given due course even without a verification, if the circumstances warrant the suspension of the rules in the interest of justice, as in the present case.[27]

As to the certification against forum shopping, the CA correctly relaxed the Rules in order to serve the ends of justice. While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs or petitioners in a case and the signature of only one of them is insufficient, this Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with absolute literalness as to subvert its own ultimate and legitimate objective. Strict compliance with the provisions regarding the certificate of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not, however, interdict substantial compliance with its provisions under justifiable circumstances.[28]

In fact, we have relaxed the rules in a number of cases for two compelling reasons: social justice considerations[29] and the

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and Agriculture (OLALIA) v. Court of Appeals, G.R. Nos. 149158-59, July 24, 2007, 528 SCRA 45, 60; *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 334.

[27] *Linton Commercial Co., Inc. v. Hellera*, G.R. No. 163147, October 10, 2007, 535 SCRA 434,446.

[28] *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 411.

[29] *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism (KILUSAN) – Organized Labor Associations in Line Industries and Agriculture (OLALIA) v. Court of Appeals*, *supra* note 26; *Estribillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218; *Damasco v. National Labor Relations Commission*, G.R. Nos. 115755 & 116101, December 4, 2000, 346 SCRA 714.

apparent merit [30] of the petition. In light of these jurisprudential pronouncements, the CA should not be faulted in setting aside the procedural infirmity, allowing the petition to proceed and deciding the case on the merits. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat *vis-à-vis* substantive rights, and not the other way around.[31]

Now on the substantive issue of the validity of the dismissal and preventive suspension of respondents.

Petitioner insists that respondents' dismissal from service was lawful and justified by the following grounds: 1) as probationary employees, respondents failed to meet the reasonable standards for their permanent employment; and 2) in publicly accusing petitioner on radio and national television, of dishonesty and wrongdoing, during the pendency of the administrative investigation of the alleged dishonest acts, undertaken by the proper government agency.[32]

Initially, it should be clarified that this controversy revolves only on respondents' probationary employment. On March 31, 2001, the effective date of their dismissal,[33] respondents were not regular or permanent employees; they had not yet completed three (3) years of satisfactory service as academic personnel which would have entitled them to tenure as permanent employees in accordance with the Manual of Regulations for Private Schools.[34] On that date, Pe Benito's contract of employment

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[30] *Estribillo v. Department of Agrarian Reform, supra*; *San Miguel Corporation v. Aballa, supra* note 28; *De Guia v. De Guia*, G.R. No. 135384, April 4, 2001, 356 SCRA 287.

[31] *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism (KILUSAN) – Organized Labor Associations in Line Industries and Agriculture (OLALIA) v. Court of Appeals, supra* note 26, at 60; *Ballao v. Court of Appeals, supra* note 25, at 233.

[32] *Rollo*, pp. 412-423.

[33] Per Notices of Termination issued by the petitioner; see *rollo*, pp. 105-108.

[34] Section 92, Manual of Regulations for Private Schools, (1995 ed.) provides:

still had two months to run, while Balaguer's probationary employment was to expire after one year and two months.

A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. The word "probationary," as used to describe the period of employment, implies the purpose of the term or period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.[35]

Probationary employees enjoy security of tenure in the sense that during their probationary employment, they cannot be dismissed except for cause or when he fails to qualify as a regular employee.[36] However, upon expiration of their contract of employment, probationary employees cannot claim security of tenure and compel their employers to renew their employment contracts. In fact, the services of an employee hired on probationary basis may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. There is nothing that would hinder the employer from extending a regular or permanent appointment to an employee once the employer finds that the employee is qualified for regular

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Section 92. *Probationary Period*. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

[35] *Escorpizo v. University of Baguio*, 366 Phil. 166, 175-176 (1999).

[36] *Lacuesta v. Ateneo de Manila University*, G.R. No. 152777, December 9, 2005, 477 SCRA 217, 225; *Escorpizo v. University of Baguio*, *id.* at 179; p. 507.

employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground.[37]

The notices of termination sent by petitioner to respondents stated that the latter failed to qualify as regular employees.[38] However, nowhere in the notices did petitioner explain the details of said "failure to qualify" and the standards not met by respondents. We can only speculate that this conclusion was based on the alleged acts of respondents in uttering defamatory remarks against the school and the school principal;[39] failure to report for work for two or three times;[40] going to class without wearing proper uniform;[41] delay in the submission of class records; and non-submission of class syllabi. Yet, other than bare allegations, petitioner failed to substantiate the same by documentary evidence. Considering that respondents were on probation for three years, and they were subjected to yearly evaluation by the students and by the school administrators (principal and vice-principal), it is safe to assume that the results thereof were definitely documented. As such, petitioner should have presented the evaluation reports and other related documents to support its claim, instead of relying solely on the affidavits of their witnesses. The unavoidable inference, therefore, remains that the respondents' dismissal is invalid.

If respondents could not be dismissed on the above-mentioned ground, could their services have been validly terminated on the ground of serious misconduct?

The Labor Code commands that before an employer may legally dismiss an employee from the service, the requirement

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[37] *Escorpizo v. University of Baguio*, *supra*, at p. 179; pp. 507-508.

[38] *Rollo*, pp. 105-108.

[39] *Id.* at 100.

[40] *Id.* at 100-101.

[41] *Id.* at 100.

of substantial and procedural due process must be complied with.[42] Under the requirement of substantial due process, the grounds for termination of employment must be based on just[43] or authorized causes.[44]

Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. The misconduct to be serious within the meaning of the Act, must

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[42] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, July 31, 2006, 497 SCRA 361, 374.

[43] The following are the just causes of termination of employment, as provided for in Article 282 of the Labor Code, thus:

Art. 282. TERMINATION BY EMPLOYER

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

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

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

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

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

e) Other causes analogous to the foregoing.

[44] The following are the authorized causes of termination as provided for in Articles 283 and 284 of the Labor Code, *viz.:*

ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of the Title, x x x.

ART. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: x x x.

be of such a grave and aggravated character and not merely trivial or unimportant.[45] Such misconduct, however serious, must nevertheless be in connection with the work of the employee to constitute just cause for his separation.[46] *It is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.*[47]

Petitioner anchored its imputation of serious misconduct principally on the respondents' expose of the NSAT/NEAT anomaly. Petitioner argues that by appearing on television and speaking over the radio, respondents were undeserving to become part of the school community, and the school, therefore, could not be compelled to retain in its employ such undisciplined teachers.

In this regard, we find it necessary to go back to where the controversy started, when the concerned teachers, including respondents, presented to petitioner a manifesto, setting forth the issues they wanted the school to address. As correctly observed by the CA, the tenor of the manifesto indicated good faith, as the teachers, in fact, expressly stated that their ultimate objective was not to put the school down, but to work for some changes which would be beneficial to the students, teachers, the school and the country as a whole.[48] In their effort to settle the issues amicably, the teachers (including respondents) asked for a dialogue with petitioner but the latter, instead of engaging in creative resolution of the matter, uttered unnecessary statement against respondents. This incident was followed by subsequent acts of petitioner showing abuse of its power over the teachers, especially respondents, who at that time, were under probation.

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[45] *National Labor Relations Commission v. Salgarino*, *supra* note 42, at 375; *Colegio de San Juan de Letran – Calamba v. Villas*, 447 Phil. 692, 699 (2003).

[46] *National Labor Relations Commission v. Salgarino*, *supra* note 42, at 375-376.

[47] *Id.* at 376.

[48] *Rollo*, p. 56.

Notwithstanding its claim that respondents were remiss in their duties as teachers during the whole period of probation, it was only after the NSAT/NEAT exposé when petitioner informed respondents of their alleged substandard performance. The chronology of events, therefore, supports the view that respondents' suspension and eventual dismissal from service were tainted with bad faith, as obvious retaliatory acts on the part of petitioner.

The totality of the acts of respondents cannot be characterized as "misconduct" under the law, serious enough to warrant the severe penalty of dismissal. This is especially true because there is no finding of malice or wrongful intent attributable to respondents. We quote with approval the CA's ratiocination in this wise:

> Petitioners [respondents herein], along with their colleagues, initiated the dialogue and brought the above issues to the school authorities but the School Principal's reaction was far from what the teachers expected. Instead of taking serious concern and properly addressing the teachers' grievances as expressed in the Manifesto, Mrs. Palabrica got angry and hysterical accusing the petitioners [respondents] of malice and bad faith and even threatened to dismiss them. Petitioners' [respondents'] subsequent media exposé and filing of a formal complaint was necessitated by private respondents' [petitioner's] inaction and refusal to heed their legitimate complaint. Being but a legitimate exercise of their rights as such teachers/ educators and as citizens, under the circumstances, We cannot readily impute malice and bad faith on the part of the petitioners [respondents] who, in fact, risked such the harsh consequence of loss of their job and non-renewal of their probationary employment contract just so the issue of the NEAT/NSAT anomaly involving their school would be ventilated in the proper forum as to compel or somehow pressure not only their school but more important, the government's education officials at the DECS to undertake proper and urgent measures. Hardly would such acts in relation to a matter impressed with public interest — *i.e.* the integrity of the NEAT/NSAT process as a tool designed by the DECS to measure or gauge the achievement level of pupils and students in the schools nationwide – be considered as showing moral depravity or ill will on the part of the petitioners. x x x[49]

[49] *Id.* at 58-59.

In light of this disquisition, it is settled that petitioner failed to comply with the requirement of substantial due process in terminating the employment of respondents.

We now determine whether petitioner had complied with the procedural aspect of lawful dismissal.

In the termination of employment, the employer must (a) give the employee a written notice specifying the ground or grounds of termination, giving to said employee reasonable opportunity within which to explain his side; (b) conduct a hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) give the employee a written notice of termination indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.[50]

Suffice it to state that respondents were afforded their rights to answer to petitioner's allegation and were given the opportunity to present evidence in support of their defense. Nowhere in any of their pleadings did they question the procedure for their termination except to challenge the ground relied upon by petitioner. Ostensibly, therefore, petitioner had complied with the procedural aspect of due process in terminating the employment of respondents. However, we still hold that the dismissal is illegal, because of petitioner's failure to satisfy the substantive aspect thereof, as discussed above.

We are not unmindful of the equally important right of petitioner, as employer, under our Constitution, to be protected in their property and interest. Nevertheless, the particular circumstances surrounding this case convince us that the supreme penalty of dismissal upon respondents is not justified. The law regards the workers with compassion. This is not only because of the law's concern for the workingman. There is, in addition,

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[50] *National Labor Relations Commission v. Salgarino, supra* note 42, at 381-382, citing *Agabon v. National Labor Relations Commission*, 442 SCRA 573, 608 (2004).

his family to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage-earner.[51]

Respondents likewise questioned their preventive suspension, but the Labor Arbiter and the NLRC sustained its validity. The CA, on the other hand, declared the same to be illegal. Thus, petitioner insists that respondents' preventive suspension was proper, in view of the latter's acts of utilizing their time, not to teach, but to spread rumors that the former was about to cease operation.[52]

The law is clear on this matter. While the employer may place the worker concerned under preventive suspension, it can do so only if the latter's continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.[53] In this case, the grounds relied upon by petitioner in placing respondents under preventive suspension were the alleged violation of school rules and regulations on the wearing of uniform, tardiness or absence, and maliciously spreading false accusations against the school.[54] These grounds do not, in any way, pose a threat to the life or property of the school, of the teachers or of the students and their parents. Hence, we affirm the CA's conclusion that respondents' preventive suspension was illegal.

As probationary employees, respondents' security of tenure is limited to the period of their probation — for Pe Benito, until June 2001[55] and for Balaguer, June 2002.[56] As they were no

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[51] *National Labor Relations Commission v. Salgarino, supra* note 42.

[52] *Rollo,* pp. 423-425.

[53] Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII, Sec. 8; *Gatbonton v. National Labor Relations Commission*, G.R. No. 146779, January 23, 2006, 479 SCRA 416, 422; *Valiao v. Court of Appeals*, 479 Phil. 459, 472 (2004).

[54] *Rollo,* pp. 53-54.

[55] The contract of employment specifically stated that the probationary period was three (3) years and the contract was to take effect for three (3) years. Since the contract took effect in June 1998, it expired in June 2001; *id.* at 92.

[56] The contract of employment specifically stated that the probationary period was three (3) years and the contract was to take effect for three (3) years. Since the contract took effect in June 1999, it expired in June 2002; *id.* at 93.

longer extended new appointments, they are not entitled to reinstatement and full backwages. Rather, Pe Benito is only entitled to her salary for her 30-day preventive suspension.[57] As to Balaguer, in addition to his 30-day salary during his illegal preventive suspension, he is entitled to his backwages for the unexpired term of his contract of probationary employment.

Lastly, petitioner faults the appellate court for awarding moral and exemplary damages in favor of respondents despite lack of sufficient basis to support the award.[58]

A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud; or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[59] The award of said damages cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. It is necessary that additional facts be pleaded and proven that the act of dismissal was attended by bad faith, fraud, *et al*., and that social humiliation, wounded feelings and grave anxiety resulted therefrom.[60]

Be that as it may, we find the award of moral and exemplary damages proper, as we quote with approval the CA's justification for the award, thus:

At any rate, there is no question that both petitioners [respondents herein] are entitled to the award of moral and exemplary damages,

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[57] Although Pe Benito's contract expired in June 2001 and she was dismissed from the service effective March 31, 2001, she is not entitled to her salary for the months of April and May because it was specifically stated in her contract of employment that she was only entitled to her 10-month salary which is the period when she actually rendered her service; *id.* at 92.

[58] *Rollo*, pp. 428-429.

[59] *Quadra v. Court of Appeals*, G.R. No. 147593, July 31, 2006, 497 SCRA 221, 227.

[60] *Gatbonton v. National Labor Relations Commission*, *supra* note 53, at 426, citing *Cocoland Development Corporation v. NLRC*, 328 Phil. 351, 365-366 (1996).

in view of the proven acts done in bad faith on the part of private respondents [petitioner herein] who threatened petitioners' [respondents'] immediate dismissal when the Manifesto was presented by petitioners [respondents], berating and verbally castigating petitioner [respondent] Pe Benito, portraying them as mere detractors in an open letter to the parents who were merely motivated by the design to malign the integrity of the school. x x x We find such bad faith on the part of private respondents [petitioner] in effectively exerting pressure to silence the petitioners [respondents] regarding their legitimate grievances against the school as sufficiently established in the records, private respondents' [petitioner's] actuations having sullied the professional integrity of the petitioners [respondents] and divided the faculty members on the controversy. For such unjustified acts in relation to the NEAT/NSAT controversy that resulted to loss, prejudice and damage to petitioners [respondents], private respondents [petitioner] are liable for moral and exemplary damages.[61]

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Court of Appeals Decision and Resolution dated June 30, 2003 and September 26, 2003, respectively, in CA-G.R. SP No. 75249, are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Chico-Nazario, JJ.,* concur.

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[61] *Rollo,* p. 60.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 531 dated October 20, 2008.

[**] Additional member in lieu of Associate Justice Ruben T. Reyes per Special Order No. 521 dated September 29, 2008.

THIRD DIVISION

[G.R. No. 164632. October 29, 2008]

URETHANE TRADING SPECIALIST, INC., *petitioner, vs.* **EDWIN ONG and LETICIA ONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL THEREOF CAN NOT BE QUESTIONED UNDER RULE 65 OF THE RULES OF COURT. — Well–entrenched in our jurisdiction is the rule that the trial court's denial of a motion to dismiss cannot be questioned in a *certiorari* proceeding under Rule 65 of the Rules of Court. This is because a *certiorari* writ is a remedy designed to correct errors of jurisdiction and not errors of judgment. The appropriate course of action of the movant in such event is to file an answer and interpose as affirmative defenses the objections raised in the motion to dismiss. If, later, the decision of the trial judge is adverse, the movant may then elevate on appeal the same issues raised in the motion.

2. ID.; ID.; ID.; ID.; EXCEPTION. — The only exception to this rule is when the trial court gravely abused its discretion in denying the motion. This exception is, nevertheless, applied sparingly, and only in instances when there is a clear showing that the trial court exercised its judicial power in an arbitrary or despotic manner by reason of passion or personal hostility. Further, the abuse of the court's discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law.

3. ID.; ID.; ID.; EVIDENTIARY MATTERS CANNOT BE RESOLVED IN A MERE MOTION TO DISMISS; CASE AT BAR. — To elucidate, the grounds raised in the motion are: (1) bar by the statute of limitations or by laches; and (2) waiver, abandonment or extinguishment of claim. These grounds are, however, based on petitioner's assertion that respondents cannot invoke "lack of jurisdiction over their persons" as a ground in the petition for annulment of judgment.

> This is a conclusion of law that cannot be used as the foundation of the motion to dismiss. The assertion still needs to be proven or disproven by the parties and resolved by the trial court. Indeed, petitioner's allegations in the motion that respondents actually received the summons and that one of them even voluntarily submitted to the jurisdiction of the MeTC, are matters of evidence that need to be threshed out in the trial. True or not, respondents must be given ample opportunity to prove their claim, and the petitioner to debunk the same. The same principle holds true on the issues of laches, abandonment and prescription alleged in the motion. These involve evidentiary matters requiring a full-blown trial on the merits and cannot be resolved in a mere motion to dismiss. Furthermore, prescription will warrant the dismissal of the case only when the complaint on its face shows that indeed the action has already prescribed.

APPEARANCES OF COUNSEL

MCP Law and Pineda Romaquin & Beltran Law Office for petitioner.

Gaudioso C. De Lunas for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the February 12, 2004[1] and the July 26, 2004[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No 79251.

The dispute between the parties started in June 2000 when petitioner filed a Complaint[3] for sum of money against the respondents (docketed as Civil Case No. 8142) before the

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[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Ruben T. Reyes (now a member of this Court) and Edgardo P. Cruz, concurring; CA *rollo*, pp. 229-230.

[2] *Id.* at 268-269.

[3] *Id.* at 63-65.

Metropolitan Trial Court (MeTC) of Pasig City. In the proceedings, respondents were declared in default, and petitioner presented evidence *ex parte*.[4] On October 30, 2001, the MeTC rendered its Decision[5] ordering respondents, jointly and severally, to pay the petitioner ₱295,026.01 with legal interest as actual damages, and 25% thereof as attorney's fees.

Following the finality of the said decision, petitioner moved for execution on January 10, 2002.[6] No opposition having been filed, the MeTC, on March 18, 2002, ordered the issuance of a writ of execution.[7]

On July 9, 2002, respondents filed a petition for annulment of judgment with damages and prayer for injunctive relief before the Regional Trial Court (RTC) of Pasig City. This was docketed as Civil Case No. 69034.[8] In their petition, they claimed that they did not receive the summons issued by the MeTC; that the sheriff's return of summons was manufactured; and that they were not furnished copies of the order of default. Thus, they prayed that the MeTC decision be annulled on grounds of extrinsic fraud and lack of jurisdiction over their persons.[9]

Petitioner moved for the dismissal of the petition on the following grounds: (1) that the cause of action is barred by the statute of limitation; and (2) that the claim or demand set forth in the petition has been waived, abandoned or otherwise extinguished. It contended that the summons was in fact served on respondents; that the MeTC Sheriff initially went to the business address of respondent Leticia Ong at Nos. 777-779 Rizal Avenue, Manila, but as the hardware store therein had already ceased its operation, he could not serve the summons at that given address; that he then proceeded to respondents'

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[4] *Id.* at 107.

[5] *Id.* at 69-70.

[6] *Id.* at 71-72.

[7] *Id.* at 77-79.

[8] *Id.* at 80.

[9] *Id.* at 82-87.

residence, but that on account of the absence of respondents and of their domestic helper's refusal to receive the summons, the Sheriff effected substituted service.[10] Petitioner further contended that respondent Edwin Ong, in the hearing on their application for an injunctive relief, admitted that he had attended one hearing in the proceedings before the MeTC.[11]

Petitioner argued that in light of these facts, respondents cannot validly invoke lack of jurisdiction over their persons as a ground in their petition; that only extrinsic fraud could be raised by them; and as they did not file a petition for relief, they were already barred by the statute of limitations and they could now be considered as having waived or abandoned their claims.[12]

Unconvinced by petitioner's arguments, the RTC denied the motion to dismiss in its April 4, 2003 Omnibus Order.[13] On August 8, 2003, it further denied petitioner's motion for reconsideration.[14]

Discontented, petitioner timely petitioned for the issuance of a writ of *certiorari* before the CA (docketed as CA-G.R. SP No. 79251). The appellate court, however, in the assailed February 12, 2004 Resolution,[15] dismissed the petition on the ground that an interlocutory order is not the proper subject of the special civil action of *certiorari*. In the further assailed July 26, 2004 Resolution,[16] it denied petitioner's motion for reconsideration.

Aggrieved, petitioner raised the following issues for the Court's resolution in the instant petition for review on *certiorari*:

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

[11] *Id.* at 122.

[12] *Id.* at 157-163.

[13] *Id.* at 40-56.

[14] *Id.* at 61.

[15] *Supra* note 1.

[16] *Supra* note 2.

I.

Whether or not, under existing laws, the Petition for Annulment of Judgment filed by Respondents should be dismissed on two (2) grounds, namely: (1) That the cause of action is barred by the statutes of limitation or by laches; and (2) The claim or demand set forth in the plaintiff's petition has been waived, abandoned, or otherwise extinguished.

II.

Whether or not the Petition for Review [should be "petition for *certiorari*"] filed by the Petitioner should be dismissed on the ground that an order denying a motion to dismiss is an interlocutory order which cannot be the subject of a petition for *certiorari*.[17]

The Court denies the petition and affirms the ruling of the CA.

Well-entrenched in our jurisdiction is the rule that the trial court's denial of a motion to dismiss cannot be questioned in a *certiorari* proceeding under Rule 65 of the Rules of Court. This is because a *certiorari* writ is a remedy designed to correct errors of jurisdiction and not errors of judgment.[18] The appropriate course of action of the movant in such event is to file an answer[19] and interpose as affirmative defenses the objections raised in the motion to dismiss.[20] If, later, the decision of the trial judge is adverse, the movant may then elevate on appeal the same issues raised in the motion.[21]

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[17] *Rollo*, p. 14.

[18] *Malicdem v. Flores*, G.R. No. 151001, September 8, 2006, 501 SCRA 248, 256-257.

[19] Section 4, Rule 16, of the Revised Rules of Court pertinently provides: "If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. x x x"

[20] *La Campana Development Corporation v. See*, G.R. No. 149195, June 26, 2006, 492 SCRA 584, 590.

[21] *David v. Rivera*, 464 Phil. 1006, 1014 (2004).

The only exception to this rule is when the trial court gravely abused its discretion in denying the motion.[22] This exception is, nevertheless, applied sparingly, and only in instances when there is a clear showing that the trial court exercised its judicial power in an arbitrary or despotic manner by reason of passion or personal hostility.[23] Further, the abuse of the court's discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law.[24]

Here, the denial by the RTC of petitioner's motion to dismiss is not tainted with grave abuse of discretion. The CA is, therefore, correct in dismissing the petition for *certiorari*.

To elucidate, the grounds raised in the motion are: (1) bar by the statute of limitations or by laches; and (2) waiver, abandonment or extinguishment of claim. These grounds are, however, based on petitioner's assertion that respondents cannot invoke "lack of jurisdiction over their persons" as a ground in the petition for annulment of judgment. This is a conclusion of law that cannot be used as the foundation of the motion to dismiss. The assertion still needs to be proven or disproven by the parties and resolved by the trial court. Indeed, petitioner's allegations in the motion that respondents actually received the summons and that one of them even voluntarily submitted to the jurisdiction of the MeTC, are matters of evidence that need to be threshed out in the trial. True or not, respondents must be given ample opportunity to prove their claim, and the petitioner to debunk the same.[25]

The same principle holds true on the issues of laches, abandonment and prescription alleged in the motion. These involve evidentiary matters requiring a full-blown trial on the merits and

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[22] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31 and G.R. Nos. 176010-11, February 11, 2008, 544 SCRA 324, 336; *David v. Rivera*, *id.*; *Choa v. Choa*, 441 Phil. 175, 182-183 (2002).

[23] *Malicdem v. Flores*, *supra* note 18, at 257.

[24] *Balo v. Court of Appeals*, G.R. No. 129704, September 30, 2005, 471 SCRA 227, 234.

[25] See *Españo, Sr. v. Court of Appeals*, 335 Phil. 983, 987 (1997).

cannot be resolved in a mere motion to dismiss.[26] Furthermore, prescription will warrant the dismissal of the case only when the complaint on its face shows that indeed the action has already prescribed.[27]

WHEREFORE, the petition for review on *certiorari* is *DENIED.*

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Chico-Nazario, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172901. October 29, 2008]

AMERICAN EXPRESS INTERNATIONAL, INC., *petitioner, vs.* **HON. JUDGE MARLENE GONZALES SISON, in her capacity as Presiding Judge of Branch 85 of the Quezon City Regional Trial Court, and MARIA TERESA FERNANDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM RTC TO CA FOR CASES IN THE EXERCISE OF ITS ORIGINAL JURISDICTION; APPELLATE COURT

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[26] See *Pineda v. Heirs of Eliseo Guevarra,* G.R. No. 143188, February 14, 2007, 515 SCRA 627, 637; *Español, Sr. v. Court of Appeals, id.*

[27] *Balo v. Court of Appeals, supra* note 24, at 240.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 531 dated October 20, 2008.

[**] Additional member in lieu of Associate Justice Ruben T. Reyes per Special Order No. 521 dated September 29, 2008.

DOCKET AND OTHER LAWFUL FEES; PAYMENT THEREOF WITHIN PRESCRIBED PERIOD, MANDATORY. — Rule 41 of the Rules of Court provides the procedure for appeals to the Court of Appeals from judgments or final orders of the RTC in the exercise of its original jurisdiction. Sec. 4 thereof, which particularly applies to the instant case, provides: Sec. 4. *Appellate court docket and other lawful fees.*—Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. As stated, the payment of the docket fee within the prescribed period is mandatory.

2. ID.; ID.; ID.; ID.; QUALIFICATION. — In *Buenaflor v. Court of Appeals*, however, we qualified this rule, and declared, *first*, that the failure to pay the appellate court docket fee within the reglementary period warrants only discretionary as opposed to automatic dismissal of the appeal; and *second*, that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with a great deal of, circumspection considering all attendant circumstances. In that case, the postal money orders which were intended for the payment of the appellate docket fees were actually sent to the trial court within the reglementary period and received by the latter. Thus, although the money orders were made payable to the clerks of court of the Supreme Court and the Court of Appeals and not the clerk of court of the trial court, we held that the defect was minor and should not be construed as a failure to pay the docket fees.

3. ID.; ID.; ID.; ID.; BY CONVENTION, LITIGANTS OPT TO USE THE POSTAL MONEY ORDER SYSTEM FOR THE OFFICIAL NATURE OF TRANSACTIONS COURSED THROUGH THIS SYSTEM; CASE AT BAR. — There is no specific provision in the Rules of Court prescribing the manner by which docket or appeal fees should be paid. However, as a matter of convention, litigants invariably opt to use the postal money order system to pay such fees not only for its expediency but also for the official nature of transactions coursed through this system. The controversy spawned by the question of whether Amex had, in fact, paid the appeal fees within the reglementary

period could have been avoided entirely had it chosen to pay such fees through postal money order and not by enclosing its payment in a letter. After all, Amex's counsel's messenger could easily have procured a postal money order while he was already at the Ayala Post Office filing the Notice of Appeal by registered mail.

4. ID.; ID.; ID.; ID.; PROVING PAYMENT OF DOCKET FEE WITHIN THE REGLEMENTARY PERIOD; SECTION 12, RULE 13 OF THE RULES OF COURT IS APPLICABLE. — A discussion of the insufficiency of the evidence presented by Amex to prove the payment of the docket fee within the reglementary period is in order. In this regard, Sec.12, Rule 13 of the Rules of Court is applicable because the payment of the docket fee is intertwined with the filing of the Notice of Appeal. The section provides: Sec. 12. *Proof of filing*. — The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten(10) days if not delivered.

5. ID.; ID.; ID.; ID.; ID.; CASE AT BAR. — Amex professed that it had paid the docket fee on the same day that it filed a Notice of Appeal. It presented as proof of payment a photocopy of the January 29, 2001 letter in which was supposedly enclosed the docket fee of ₱600.00, with the superimposed photocopy of Ayala Post Office Postal Registry Receipt No. 1860, under which the letter was allegedly mailed. Based on the proof required under Sec. 12 above, the registry receipt presented by Amex does not suffice as proof of payment of the docket fee in this case. For one, filed with the Court are mere photocopies of the letter and the registry receipt and even if the original of the registry receipt was submitted, there is no indication therein that it refers to the letter or the alleged docket fee payment. For another, Amex should have also submitted in evidence the affidavit of the person who did the mailing,

containing a full statement of the details of mailing. As the party to whom the burden of proof to show that the letter was mailed and received by the addressee lay, Amex could have easily presented the affidavit of its messenger to satisfy the requirement of the Rules of Court. Unfortunately, Amex offered no explanation for its failure to discharge its burden.

6. ID.; ID.; APPEAL FROM CA TO SC; IMPLEADING TRIAL COURT JUDGE, IMPROPER. — As a final note, we find that impleading the trial court judge in the present petition is improper. Sec.4, Rule 45 of the Rules of Court specifically states that the lower courts or judges thereof shall not be impleaded either as petitioners or respondents in a petition for review on *certiorari.* Amex's explanation that the trial court judge was impleaded in the petition because the same is an appeal from the appellate court's decision in Amex's petition for *certiorari* under Rule 65 of the Rules of Court where the judge was required to be joined as a respondent is not only circuitous but also an obvious misapprehension of the rules. Nonetheless, we do not find this error sufficient to warrant the outright denial of the petition, considering that it raises a question of law worthy of review.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Bohol Bohol II Jimenez Law Offices for M.T. Fernando.

D E C I S I O N

TINGA, *J.*:

American Express International, Inc. (Amex) questions the Decision[1] of the Court of Appeals in CA-G.R. SP No. 71987, dated December 19, 2005, insofar as it ruled that Amex was not able to prove that it had paid the appeal docket fees within the reglementary period thereby warranting the trial court's denial

[1] *Rollo*, pp. 10-22; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao.

of its notice of appeal, and the appellate court's Resolution,[2] dated June 1, 2006, denying its motion for partial reconsideration.

The records disclose the following antecedent facts:

Celia A. Silang-Cruz (Cruz) filed a complaint for Collection of Sum of Money and Damages against Ma. Teresa S. Fernando (Fernando) and Enrico Pineda (Pineda) arising from Fernando's use of an Amex supplementary credit card to obtain accommodations for a certain Alejandra Rodriguez (Rodriguez) at the Mandarin Oriental Hotel (Mandarin). Cruz alleged that Fernando did not seek her prior authority for the use of the Amex card, of which Cruz was the principal cardholder, before charging Rodriguez's bill, which amounted to $17,318.94, to her account. Fernando allegedly admitted having incurred the charges and even issued a check to answer for the account which, however, was dishonored by the drawee bank.

As a consequence of the foregoing, Cruz's Amex card was cancelled, prompting her to file suit against Fernando and Pineda before the Regional Trial Court (RTC) of Quezon City, Branch 85, docketed as Civil Case No. Q-93-16680.

Pineda and Fernando were initially declared in default but the trial court ultimately admitted their answers.

Fernando claimed that she and Cruz were business partners engaged in the supply of construction materials. In one of their business transactions, Fernando and Cruz earned an aggregate net income of ₱1,878,221.00 which they were supposed to divide equally, with each of them receiving ₱939,110.50. Cruz allegedly refused to give Fernando her share in the income of their venture and even filed the collection case against her in order to evade having to pay the sum.

Fernando professed that she had not authorized the use of her supplementary credit card to pay for Rodriguez's accommodations at the Mandarin and even filed a third party complaint against the hotel, Amex and Rodriguez. Mandarin

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

was allegedly grossly negligent in charging Rodriguez's bill to Fernando's supplementary card without authority from the latter and without asking Fernando to sign the required credit card stencil or credit authorization form as is the standard practice in such transactions. Amex was also allegedly grossly negligent when it settled the account amounting to ₱438,169.18 and charged the same against Cruz's credit.

In answer to the third party complaint, Mandarin insisted that the supplementary card was charged for Rodriguez's accommodations with Fernando's knowledge and authorization.

Amex, for its part, claimed that its responsibility in the questioned transaction was limited to verifying whether the card was valid and had not exceeded its charging limit. It had allegedly performed its responsibility in this case.

After due proceedings, the trial court rendered judgment[3] in favor of Fernando. The dispositive portion of the trial court's decision states:

> WHEREFORE, for and in consideration of the foregoing premises, judgment is hereby rendered in favor of Defendant-Third Party Plaintiff MA. TERESA FERNANDO and against CELIA SILANG CRUZ, Third Party Defendants MANDARIN, AMEX and RODRIGUEZ, as follows:
>
> 1. Ordering plaintiff to pay defendant MA. TERESA FERNANDO the amount of ₱1,000,000.00 as moral damages, ₱500,000.00 as exemplary damages and attorney's fees equivalent to 20% of the foregoing amount;
>
> 2. Ordering Third Party Defendants MANDARIN, AMEX and RODRIGUEZ to pay Third Party Plaintiff MA. TERESA FERNANDO the amount of ONE MILLION (₱1,000,000.00) PESOS each as moral damages;
>
> 3. Ordering Third Party Defendants MANDARIN, AMEX and RODRIGUEZ to pay Third Party Plaintiff MA. TERESA FERNANDO the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS each as and for exemplary damages;

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[3] *Id.* at 82-89; RTC decision dated December 1, 2000.

4. Ordering plaintiff and Third Party Defendants MANDARIN, AMEX and RODRIGUEZ jointly and severally to pay attorney's fees in the amount of thirty per cent (30%) of the foregoing amount;

5. Ordering plaintiff and Third Party Defendants MANDARIN, AMEX and RODRIGUEZ similarly to pay the costs of the suit.

SO ORDERED.[4]

The motions for reconsideration filed by Amex[5] and Mandarin were denied by the RTC in its Order[6] dated January 15, 2001.

Amex filed its Notice of Appeal[7] on January 29, 2001, which was promptly opposed by Fernando on the ground of non-payment of the appeal, docket and other legal fees within the reglementary period. In an Order[8] dated March 4, 2002, the trial court denied the Notice of Appeal and declared its decision dated December 1, 2000 final and executory with respect to Amex. It denied reconsideration in its Order[9] dated June 27, 2002.

Amex assailed the March 4, 2002 and June 27, 2002 Orders as having been issued with grave abuse of discretion. It claimed that it had paid the prescribed docket fee twice; the first time by registered mail within the reglementary appeal period. The trial court allegedly ignored the well-entrenched principle of subserving technicalities in the interest of substantial justice. Amex further averred that the trial court should not have denied its appeal in view of the fact that the appeal filed by Mandarin, its co-judgment debtor, had been duly perfected and given due course.

Ruling on the issues raised by Amex, the Court of Appeals, in its assailed Decision dated December 19, 2005, declared that

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[4] *Id.* at 296-319.

[5] *Id.* at p. 315.

[6] *Id.* at 130-131.

[7] *Id.* at 132-133.

[8] *Id.* at 144-146.

[9] *Id.* at 147-150.

the non-receipt by the Office of the Clerk of Court (OCC) of the letter in which Amex supposedly enclosed payment of the appeal docket fees produced the effect of non-payment thereof. The appellate court noted that Amex failed to discharge its burden to prove that the letter was mailed and received by the OCC as it did not present any certification from the postmaster as to how, when and to whom delivery of the registry notice of the subject mail was made; whether said notice was received by the OCC; or whether the letter was in fact received by the OCC.

However, the Court of Appeals ruled that the trial court can not yet execute its decision with respect to the judgment against Amex pending Mandarin's appeal.

The appellate court denied reconsideration in its Resolution[10] dated June 1, 2006.

Insisting that it actually sent the payment for docket fees by registered mail on January 29, 2001, Amex argues in its Petition for Review on *Certiorari*[11] dated July 17, 2006, that the non-receipt by the OCC of its letter dated January 29, 2001 with the enclosed payment of docket fees does not produce the effect of non-payment of such fees. Amex also avers that the Court of Appeals should have liberally construed the rules in the interest of substantial justice.

In her Comment[12] dated October 4, 2006, Fernando contends that the petition should be denied because it erroneously impleads Hon. Marlene Gonzales Sison[13] (Judge Sison) in her capacity as Presiding Judge of Branch 85 of the RTC in contravention of Sec. 4, Rule 45 of the 1997 Rules of Civil Procedure (Rules of Court). The petition also raises factual issues which have already been passed upon by the appellate court.

Fernando suggests that if the Notice of Appeal and the letter in which the payment of docket fee was supposedly enclosed

[10] *Id.* at 27-28.

[11] *Id.* at 31-64.

[12] *Id.* at 357-371.

[13] Now an Associate Justice of the Court of Appeals.

were mailed simultaneously as Amex claims, the registry receipts of these mail matters would have been consecutively numbered.

Amex filed a Reply[14] dated November 3, 2006, insisting that Judge Sison was properly impleaded because the petition is an appeal from the decision of the Court of Appeals ruling on Amex's petition for *certiorari* where Judge Sison was required to be joined as a respondent under Rule 65 of the Rules of Court. Amex further argues that the question to be resolved in this case is not whether it had sent the payment of the docket fees within the reglementary period, but whether the non-receipt of the OCC of Amex's payment produced the effect of non-payment of docket fees.

As regards the purported irregularity in the mailing of the docket fee payment, Amex contends that it has no control over the numbering of registry receipts and no conclusion adverse to it can be gathered merely from the fact that the mail matters were not receipted consecutively.

Amex filed a Motion for Leave to File Memorandum[15] dated August 21, 2007, attaching therewith its Memorandum[16] of even date. However, Amex filed, on February 7, 2008, a Motion to Defer Resolution and/or Suspend Proceedings[17] dated February 5, 2008, based on information that Mandarin's appeal is now pending resolution before the Court of Appeals.

Fernando promptly opposed Amex's motion in its Comment[18] dated April 18, 2008.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply

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[14] *Id.* at 376-389.

[15] *Id.* at 397-398.

[16] *Id.* at 400-422.

[17] *Id.* at 427-432.

[18] *Id.* at 436-437.

strictly with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[19]

Rule 41 of the Rules of Court provides the procedure for appeals to the Court of Appeals from judgments or final orders of the RTC in the exercise of its original jurisdiction. Sec. 4 thereof, which particularly applies to the instant case, provides:

> Sec. 4. *Appellate court docket and other lawful fees.* — Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

As stated, the payment of the docket fee within the prescribed period is mandatory. In *Buenaflor v. Court of Appeals*,[20] however, we qualified this rule, and declared, *first*, that the failure to pay the appellate court docket fee within the reglementary period warrants only discretionary as opposed to automatic dismissal of the appeal; and *second*, that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances.

In that case, the postal money orders which were intended for the payment of the appellate docket fees were actually sent to the trial court within the reglementary period and received by the latter. Thus, although the money orders were made payable to the clerks of court of the Supreme Court and the Court of Appeals and not the clerk of court of the trial court, we held that the defect was minor and should not be construed as a failure to pay the docket fees.

In contrast, the OCC of the trial court in this case did not receive the docket fee payment within the reglementary period. To reiterate, it was only on March 29, 2001, two months beyond the 15-day

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[19] *M.A. Santander Construction, Inc. v. Villanueva*, G.R. No. 136477, November 10, 2004, 441 SCRA 525, 528.

[20] 400 Phil. 395 (2000).

reglementary period for taking an appeal, that the clerk of court of the RTC finally received payment of the docket fee, and not even because the letter with the enclosed payment had finally found its way to the OCC. That would have at least lent credibility to Amex's contention that it had indeed sent the letter containing the docket fee payment within the prescriptive period.

There is no specific provision in the Rules of Court prescribing the manner by which docket or appeal fees should be paid. However, as a matter of convention, litigants invariably opt to use the postal money order system to pay such fees not only for its expediency but also for the official nature of transactions coursed through this system. The controversy spawned by the question of whether Amex had, in fact, paid the appeal fees within the reglementary period could have been avoided entirely had it chosen to pay such fees through postal money order and not by enclosing its payment in a letter. After all, Amex's counsel's messenger could easily have procured a postal money order while he was already at the Ayala Post Office filing the Notice of Appeal by registered mail.

A discussion of the insufficiency of the evidence presented by Amex to prove the payment of the docket fee within the reglementary period is in order. In this regard, Sec. 12, Rule 13 of the Rules of Court is applicable because the payment of the docket fee is intertwined with the filing of the Notice of Appeal. The section provides:

> Sec. 12. *Proof of filing.* — The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered.

Amex professed that it had paid the docket fee on the same day that it filed a Notice of Appeal. It presented as proof of

payment a photocopy of the January 29, 2001 letter in which was supposedly enclosed the docket fee of ₱600.00, with the superimposed photocopy of Ayala Post Office Postal Registry Receipt No. 1860, under which the letter was allegedly mailed. Based on the proof required under Sec. 12 above, the registry receipt presented by Amex does not suffice as proof of payment of the docket fee in this case. For one, filed with the Court are mere photocopies of the letter and the registry receipt and even if the original of the registry receipt was submitted, there is no indication therein that it refers to the letter or the alleged docket fee payment. For another, Amex should have also submitted in evidence the affidavit of the person who did the mailing, containing a full statement of the details of mailing. As the party to whom the burden of proof to show that the letter was mailed and received by the addressee lay, Amex could have easily presented the affidavit of its messenger to satisfy the requirement of the Rules of Court. Unfortunately, Amex offered no explanation for its failure to discharge its burden.

Thus, we agree with the appellate court that no grave abuse of discretion attended the trial court's denial of Amex's Notice of Appeal. The Court acknowledges that appeal is an essential part of our judicial system and every party litigant must be afforded the opportunity for the proper and just disposition of his cause. However, the force and effect of procedural rules, such as those that prescribe the period and manner by which appeals should be perfected, or those that detail the means by which the filing of pleadings, notices or similar papers is proved, should not be undermined without the most compelling of reasons. We find no such compelling reason to warrant a liberal application of the rules.

As a final note, we find that impleading the trial court judge in the present petition is improper. Sec. 4, Rule 45 of the Rules of Court specifically states that the lower courts or judges thereof shall not be impleaded either as petitioners or respondents in a petition or review on *certiorari*. Amex's explanation that the trial court judge was impleaded in the petition because the same is an appeal from the appellate court's decision in Amex's petition for *certiorari* under Rule 65 of the Rules of Court where the judge was required to be joined as a respondent is not only circuitous

but also an obvious misapprehension of the rules. Nonetheless, we do not find this error sufficient to warrant the outright denial of the petition, considering that it raises a question of law worthy of review.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 71987 dated December 19, 2005 and its Resolution dated June 1, 2006 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174536. October 29, 2008]

ROBERTO Y. PONCIANO, JR., *petitioner, vs.* **LAGUNA LAKE DEVELOPMENT AUTHORITY and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MOTION FOR RECONSIDERATION; PERIOD TO FILE. — Under Section 1, Rule 52 of the Rules of Court, a party may file a motion for reconsideration of a judgment or final resolution within 15 days from notice thereof, with proof of service on the adverse party.

2. ID.; ID.; ID.; ID.; ID.; NON-EXTENDIBLE. — The 15-day reglementary period for filing a motion for reconsideration is non-extendible. Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken, are considered absolutely indispensable to

the prevention of needless delays and to the orderly and speedy discharge of judicial businesses. Strict compliance with such rules is mandatory and imperative.

3. ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS ALLOWED, IF SUFFICIENTLY JUSTIFIED BY MERITORIOUS AND EXCEPTIONAL CIRCUMSTANCES ATTENDANT THEREIN. — Indeed, there are cases where this Court allowed the liberal application of procedural rules, but these are exceptions, sufficiently justified by meritorious and exceptional circumstances attendant therein. Not every entreaty for relaxation of rules of procedure shall be so lightly granted by the Court for it will render such rules inutile. In *Hon. Fortich v. Hon. Corona,* the Court had the occasion to explain that: Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. **While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.** There have been some instances wherein this Court allowed a relaxation in the application of the rules, but **this flexibility was " never intended to forge a bastion for erring litigants to violate the rules with impunity."** A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.

4. ID.; ID.; ID.; ID.; ID.; ID.; WHEN FILED BEYOND SUCH PERIOD, THE MOTION FOR RECONSIDERATION *IPSO FACTO* FORECLOSES THE RIGHT TO APPEAL. — For purposes of determining its timeliness, a motion reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such

period, the motion for reconsideration *ipso facto* forecloses the right to appeal.

5. ID.; ID.; JUDGMENTS; THE COURT IS WITHOUT JURISDICTION TO MODIFY, MUCH LESS, REVERSE, A FINAL AND EXECUTORY JUDGMENT. — The Court is without jurisdiction to modify, much less, reverse, a final and executory judgment. It has been pronounced by the Court in *Paramount Vinyl Products Corporation v. National Labor Relations Commission* that: Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. **Failure to interpose a timely appeal (or a Motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment**. This rule "is applicable indiscriminately to one and all since **the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law**." Although, in a few instances, the Court has disregarded procedural lapses so as to give due course to appeals filed beyond the reglementary period, the Court did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof.

6. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; PERSONS ENTITLED TO JUDICIAL CONFIRMATION OR LEGALIZATION OF THEIR IMPERFECT OR INCOMPLETE TITLE TO THE LAND. — Section 48 of the Public Land Act, as amended by Presidential Decree No. 1073, specifically identifies the persons who are entitled to the judicial confirmation or legalization of their imperfect or incomplete title to the land, to wit — Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit: (a) [Repealed by Presidential Decree No. 1073]. (b) Those who by themselves or through their predecessors-

in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the applications for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture whether disposable or not, under a *bona fide* claim of ownership since June 12, 1945 shall be entitled to the rights granted in subsection (b) hereof.

7. REMEDIAL LAW; EVIDENCE; PHYSICAL EVIDENCE; CERTIFICATION DATED FEBRUARY 5, 2002 ISSUED BY THE URBAN FORESTRY AND LAW ENFORCEMENT UNIT, DENR-NCR; SUBJECT PROPERTY BECAME ALIENABLE AND DISPOSABLE ONLY ON JANUARY 3, 1968. — It is true that petitioner was able to present testimonial evidence that his predecessors-in-interest had possessed the land prior to 12 June 1945 or even earlier. Nevertheless, it must be stressed that also by petitioner's own evidence, particularly, the Certification dated 5 February 2002 issued by the Urban Forestry and law Enforcement Unit of the DENR-NCR, it has been established that the subject property became alienable and disposable only on **3 January 1968** by virtue of Forestry Administrative Order No. 4-1141. It is already settled that any period of possession prior to the date when the subject property was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession; such possession can never ripen into ownership and unless the land had been classified as alienable and disposable, the rules on confirmation or imperfect title shall not apply thereto.

8. CIVIL LAW; LAND TITLES AND DEEDS; PUBLIC LAND ACT; APPLIES ONLY TO AGRICULTURAL LANDS; CASE AT BAR. — It is also worthy to point out that petitioner's insistence that the subject property and the other surrounding

properties are being used for residential purposes does not work in his favor, and even militates against him. Taken together with the declaration, for realty tax purposes, by petitioner himself that the subject property is bamboo land, as well as the claim of respondent LLDA that the same property is part of the Laguna Lake bed, there is an apparent and unsettled confusion on the proper classification of the subject property. The classification of the subject property is important for it determines the applicable statutory requirements and procedures for the proper disposition thereof. Confirmation or legalization of an imperfect or incomplete title under Section 48, Title II of the Public Land Act, as amended, applies only to agricultural lands. Lands of the public domain for residential, commercial, or industrial purposes, on the other hand, are governed by Section 58 to 68, Title lll of the same statute. Without a definite classification of the subject property, there results reasonable doubt as to the appropriate legal means for petitioner to acquire title to the same.

APPEARANCES OF COUNSEL

Medina Libatique & Associates Law Office for petitioner.
Chief Legal Counsel (LLDA) for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In the present Petition for Review,[1] petitioner Roberto Y. Ponciano, Jr. primarily assails the Resolution[2] dated 4 September 2006 of the Court of Appeals denying his plea for the admission of his Motion for Reconsideration in CA-G.R. CV No. 80705 and taking no action on said Motion since it was filed beyond the reglementary period. Petitioner prays of this Court to vacate and set aside the assailed Resolution and to order the reinstatement

[1] *Rollo,* pp. 8-18.

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring; *rollo,* pp. 36-39.

of his Motion for Reconsideration by the appellate court. In the alternative, petitioner implores that this Court directly vacate and set aside the Decision[3] dated 22 February 2006 of the Court of Appeals in CA-G.R. CV No. 80705, the subject of his Motion for Reconsideration, and render judgment reinstating the Decision[4] dated 10 June 2003 of the Metropolitan Trial Court (MeTC), Branch 74, of Taguig, Metro Manila, in LRC Case No. 273, which confirmed and ordered the registration of petitioner's title over the contested parcel of land.

At the crux of the present controversy is a parcel of unregistered land (Lot 8689-D, Csd-00-000627, MCadm-590-D, Taguig Cadastral Mapping), situated in Barangay Wawa, Taguig, Metro Manila, measuring about 2,890 square meters (subject property).

Alleging to be the owner of the subject property, petitioner filed with the MeTC on 5 September 2001 an Application[5] for the original registration thereof, which was docketed as LRC Case No. 273.

The MeTC set LRC Case No. 273 for initial hearing on 30 January 2002 at 10:00 a.m. Copies of the Notice of Initial Hearing were accordingly served, published, and posted.

On 29 January 2002, the Office of the Solicitor General (OSG) entered its appearance in LRC Case No. 273 as counsel for the respondent Republic of the Philippines. At the same time, it deputized the Public Prosecutor of Taguig, Metro Manila, to appear in said case.[6]

Respondent Republic then filed with the MeTC its Opposition[7] dated 29 January 2002 seeking the denial of petitioner's Application for original registration of the subject property based on the following grounds:

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[3] *Id.* at 28-35.

[4] Penned by Assisting Judge Silvino T. Pampilo, Jr.; *rollo*, pp. 19-26.

[5] Records, pp. 1-6.

[6] *Id.* at 293-296.

[7] *Id.* at 291-292.

1. That neither the [herein petitioner] nor his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land in question for thirty (30) years in accordance with Section 48(b), Public Land Act, as amended by PD 1073 and R.A. No. 6940.

2. That the muniments of title, the tax declarations and tax payment receipts of [petitioner], if any, attached to or alleged in the application, do not constitute competent and sufficient evidence of bona-fide acquisition of the land applied for or of his open, continuous, exclusive, and notorious possession and occupation thereof in the concept of owner since June 12, 1945, or prior thereto. Said muniments of title do not appear to be genuine and the tax declarations and/or tax payment receipts indicate pretended possession of [petitioner] to be of recent vintage.

3. That the parcel of land applied for is a portion of the public domain belonging to the Republic of the Philippines not subject to private appropriation.[8]

During the initial hearing of LRC Case No. 273 held on 30 January 2002, the MeTC issued, upon the motion of petitioner's counsel, an Order[9] of general default against the whole world, except against the government (which, more appropriately, should be the respondent Republic), represented by the OSG through the Public Prosecutor.

Hearings were held in LRC Case No. 273 on 6 and 27 February 2002, wherein petitioner presented testimonial and documentary evidence in support of his Application.

Petitioner's evidence, taken as a whole, painted the following picture:

Petitioner purchased the subject property from Dolores Viar *Vda. De* Roldan (Dolores) on 27 July 1998 as evidenced by a Deed of Absolute Sale[10] bearing the same date. Dolores bought the subject property from her father, Eleuterio Viar (Eleuterio),

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[8] *Id.* at 291.

[9] Penned by Judge Benjamin T. Pozon; *id.* at 28-30.

[10] Records, pp. 222-225.

in 1966 or 1967;[11] who, in turn, inherited the same property from his own father (or Dolores' grandfather). The subject property had been in the possession of the Viar family since 1941, or even earlier. Witness Crispina Viar Vda. De Garcia (Crispina), Dolores' niece and neighbor, testified that the subject property had been in the possession of the Viar family for about 70 to 80 years.[12] The earliest Tax Declaration covering the subject property, though, was issued only in 1949 in the name of Eleuterio Viar.[13]

Petitioner paid to the Bureau of Internal Revenue (BIR) the capital gains and documentary stamp taxes due on the sale of the subject property from Dolores to him; hence, the BIR issued in petitioner's favor a Certificate Authorizing Registration[14] dated 30 July 1998. Petitioner likewise paid the appropriate local transfer taxes due on the same sale, so the Municipal Assessor of Taguig, Metro Manila, issued in petitioner's name Tax Declarations No. D-009-03162[15] and No. EL-009-02683[16] in 1999 and 2000, respectively. Petitioner had been diligently paying the annual real property tax on the subject property since his acquisition thereof in 1998.[17]

Dolores already had the subject property surveyed on 25 March 1998, prior to its sale to petitioner, and the resulting survey plan was approved on 18 February 1999.[18] The Urban

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[11] According to petitioner, Dolores informed him that she bought the subject property from her father Eleuterio in 1967 (TSN, 6 February 2002, p. 9). However, petitioner's witness, Crispina Viar *Vda. De* Garcia, narrated that the subject property was bought by Dolores from Eleuterio in 1966 (TSN, 6 February 2002, p. 19).

[12] TSN, 6 February 2002, p. 20.

[13] Records, p. 282.

[14] *Id.* at 233.

[15] *Id.* at 252-253.

[16] *Id.* at 250-251.

[17] *Id.* at 226-232.

[18] *Id.* at 13, 284-285.

Forestry and Law Enforcement Unit of the Department of Environment and Natural Resources-National Capital Region (DENR-NCR) issued a Certification dated 5 February 2002 verifying that the subject property was within the alienable and disposable land certified and released as such on 3 January 1968 under Forestry Administrative Order No. 4-1141.[19]

The subject property was already surrounded by a fence. Although the subject property was declared as bamboo land, it has since been classified as residential. Petitioner intended to build on the subject property a residential house or a warehouse.[20]

Petitioner has taken possession of the subject property. His period of possession, tacked to that of his predecessors-in-interest, has exceeded 60 years. The possession of the subject property by the petitioner and his predecessors-interest has been open, actual, continuous, uninterrupted, and adverse, never been disturbed by anyone. The subject property has not been covered by a patent or administrative title, or mortgaged or encumbered.[21]

The Public Prosecutor, being deputized by the OSG, did not offer any evidence on behalf of respondent Republic.

The MeTC thereafter considered LRC Case No. 273 submitted for decision as of 8 May 2002.[22]

While awaiting the decision of the MeTC in LRC Case No. 273, respondent Laguna Lake Development Authority (LLDA) filed therein its Opposition[23] dated 17 December 2002 also praying for the denial of petitioner's Application for original registration of the subject property. Respondent LLDA averred:

> 2. That projection of the subject lot in our topographic map based on the technical descriptions appearing in the Notice of the Initial Hearing indicated that the lot subject of this

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[19] *Id.* at 286-287.

[20] TSN, 6 February 2002, pp. 13-16.

[21] *Id*.

[22] Order penned by Judge Benjamin T. Pozon; records, p. 297.

[23] Records, pp. 301-305.

application for registration particularly described as Lot 8689-D, Mcadm 590-D containing an area of Two Thousand Eight Hundred Ninety Two (sic) (2,890) square meters more or less are located below the reglementary lake elevation of 12.50 meters referred to datum 10.00 meters below mean lower water. Site is, therefore, part of the bed of Laguna Lake considered public land and is within the jurisdiction of Laguna Lake Development Authority pursuant to its mandate under R. A. 4850, as amended. x x x

3. That Section 41 of Republic Act No. 4850, states that, "whenever Laguna Lake or Lake is used in this Act, the same shall refer to Laguna de Bay which is that area covered by the lake water when it is at the average annual maximum lake level of elevation of 12.50 meters, as referred to a datum 10.0 meters below mean low water (MLLW). Lands located at and below such elevation are public lands which form part of the bed of said lake (Section 14, R.A. 4850, as amended, underlining supplied [sic]).

4. That on the strength of the [herein respondent LLDA]'s finding and applying the above-quoted provision of law, [herein petitioner's] application for registration of the subject land has no leg to stand on, both in fact and in law;

5. That unless the Honorable Court renders judgment to declare the land as part of the Laguna Lake or that of the public domain, the [petitioner] will continue to unlawfully possess, occupy and claim the land as their (sic) own to the damage and prejudice of the Government in general and the Laguna Lake Development Authority in particular;

6. That moreover, the land sought to be registered remains inalienable and indisposable in the absence of declaration by the Director of Lands as required by law.[24]

On 10 June 2003, the MeTC promulgated its Decision[25] in LRC Case No. 273. After recounting petitioner's evidence, the MeTC adjudged:

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[24] *Id.* at 30-302.

[25] *Rollo,* pp. 19-26.

WHEREFORE, finding the allegations in the application to have been sufficiently established by the [herein petitioner's] evidence, this Court hereby confirms the title of [petitioner] **ROBERTO Y. PONCIANO**, of legal age, Filipino, single with residence at No. 30 S. Santos St., Sto. Rosario, Pateros, Metro Manila over the subject parcel of land designated at Lot 8689-DC, Mcadm-590-D, Taguig, Cadastral Mapping under Conversion-Subdivision Plan Csd-00-000627 consisting of Two Thousand Eight Hundred Ninety (2,890) square meters and hereby order the registration of the same in his name.

After finality of this Decision and upon payment of the corresponding taxes due on the said lot, let an order for the issuance of decree of registration be issued.[26]

Without seeking reconsideration of the afore-quoted MeTC Decision, respondent Republic, through the OSG, filed its Notice of Appeal.

The appeal of respondent Republic before the Court of Appeals was docketed as CA-G.R. CV No. 80705.

After an exchange of pleadings by the parties, the Court of Appeals rendered its Decision[27] dated 22 February 2006 in CA-G.R. CV No. 80705. The appellate court rejected the argument of respondent Republic that the subject property was unalienable because it formed part of the Laguna Lake bed under Republic Act No. 4890, otherwise known as the Laguna Lake Development Authority Act of 1966, as amended; and still part of the public domain. It took note that respondent Republic failed to present any evidence in support of its position.

However, the Court of Appeals proceeded to rule as follows:

[T]his does not necessarily mean that the application for registration of title would prosper. As pointed out by [herein respondent Republic], [herein petitioner] failed to present any evidence regarding specific acts of ownership to show compliance with the possessory requirements of the law. It is settled that a claimant must present

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[26] *Id.* at 25-26.

[27] *Id.* at 28-35.

evidence as to acts taken regarding the subject parcel of land, which would show ownership in fee simple and cannot offer merely general statements sans factual evidence of possession. Thus, in *Republic of the Philippines v. Court of Appeals*, 335 SCRA 693 [2000], the Supreme Court held:

> "Applicant failed to prove specific acts showing the nature of its possession and that of its predecessors in interest. The applicant must present specific acts of ownership to substantiate the claim and cannot just offer general statements, which are mere conclusions of law than factual evidence of possession. Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.
>
> The bare assertion of witnesses that the applicant of land had been in the open, adverse and continuous possession of the property for over thirty (30) years is hardly 'the well-nigh incontrovertible' evidence required in cases of this nature. In other words, facts constituting possession must be duly established by competent evidence."

In the present case, [petitioner] merely showed that he bought the land, paid real estate taxes and had it surveyed. Beyond these actions he failed to site (sic) any other act which he took regarding the land such as cultivation, putting ways and boundaries to prove his claim of ownership.[28]

Consequently, the *fallo* of the 22 February 2006 Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the Decision of the Metropolitan Trial Court of Taguig, Metro Manila, Branch 74, in LRC Case No. 273 dated 10 June 2003 for registration of title is hereby **REVERSED** and the application for registration is hereby **DENIED**.[29]

Records show that Atty. Nestor C. Beltran (Atty. Beltran), petitioner's counsel in CA-G.R. CV No. 80705, received a copy of the Court of Appeals Decision dated 22 February 2006 on

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[28] *Id.* at 32-33.

[29] *Id.* at 33-34.

28 February 2006. Petitioner, thus, had until 15 March 2006 to file his Motion for Reconsideration of the said Decision; yet, said Motion was filed only on 16 March 2006, or a day late. Petitioner followed up by filing Manifestations dated 10 and 21 April 2006 begging the indulgence of the appellate court to admit his Motion for Reconsideration, considering that the delayed filing thereof was a procedural lapse which should be considered as excusable negligence, and which did not impair the rights of the respondent Republic.

The Court of Appeals was not persuaded. In its Resolution[30] dated 4 September 2006, the appellate court reasoned:

> To begin with, basic is the legal truism in this jurisdiction that any party seeking to reconsider a judgment or final resolution must do so within fifteen (15) days from notice thereof (Section 1, Rule 52 of the 1997 Rules of Civil Procedure).
>
> The above rule is too elementary to even cause confusion upon any lawyer for that matter, unless compelling reasons actually exist to justify the relaxation of the prescriptive period mandated by law within which to file a motion for reconsideration.
>
> Having thus established herein [herein petitioner]'s *Motion for Reconsideration* was actually filed beyond the reglementary period, the assailed *Decision* dated 22 February 2006 became final and executory, thereby depriving this Court of any power to review, much more, modify or alter the same. In ***Philippine Coconut Authority vs. Garrido***, 374 SCRA 154 [2002], the Supreme Court ruled that:
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> > "The period for filing a motion for reconsideration is non-extendible. The Appellate Court is, therefore, correct in ruling that '(t)he failure of the respondents to file their motion for reconsideration within the reglementary period renders the Decision sought to be reconsidered final and executory, thereby depriving this Court the power to alter, modify or reverse the same.'"
>
> In his attempt to persuade this Court to act on his plea to admit his *Motion for Reconsideration* with favor, herein [petitioner] posits:
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> > "It bears stressing once again that the undersigned got hold of the Notice of Judgment on March 2, 2006 and the Motion

[30] *Rollo,* pp. 36-39.

> for Reconsideration was filed on March 16, 2006, or on the 14th day from receipt thereof. Upon verification of the records of the case, however, the undersigned counsel found out that the maid received the mail on February 28, 2006 but put the mail on its (sic) table only on March 2, 2006. The maid who received the mail earlier from the postman must have accidentally forgot to place the mail immediately on the undersigned counsel's table as time again instructed to her" (*Rollo*, pp. 115-116; Underscoring supplied).

While a deviation from the mandated prescriptive period to file a motion for reconsideration has been allowed so many times by the Highest Tribunal due to concrete, valid and compelling reasons, however, this Court cannot really find its way to even give the slightest consideration to the reason adverted to above by the [petitioner]. By any stretch of imagination, the afore-cited explanation offered by the [petitioner] to substantiate his prayer for the admission of his *Motion for Reconsideration* does not constitute as a justifiable reason as the same is essentially lame, if not down right preposterous.[31]

In the end, the Court of Appeals decreed:

WHEREFORE, premises considered, [herein petitioner]'s plea for the admission of his *Motion for Reconsideration* is hereby **DENIED**. Perfunctorily, **NO ACTION** will be taken by this Court on [herein petitioner]'s *Motion for Reconsideration*, the same having been filed beyond the reglementary period.[32]

Petitioner presently comes before this Court raising the following issues in his Petition:

1. Whether or not the gross negligence of petitioner's counsel binds his client; and
2. Whether or not a decision based on a technicality of procedure is favored over a decision based on the merits.[33]

In his Memorandum, petitioner, though, re-states and presents additional issues for resolution of the Court, *viz*:

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[31] *Id.* at 37-39.

[32] *Id.* at 39.

[33] *Id.* at 10.

1. Whether or not the Court of Appeals acted with grave abuse of discretion amounting to lack of, or in excess of, jurisdiction in refusing to consider that the cause of the delay in filing the Motion for Reconsideration was due to excusable negligence, and in effect, denying petitioner's Motion for Reconsideration.

2. Whether or not the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Decision, dated June 10, 2003, of the Metropolitan Trial Court, Branch 74, Taguig, Metro Manila.

3. Whether or not the Laguna Lake Development Authority acted with grave abuse of discretion in declaring that the subject property cannot be appropriated or be subject of private ownership.

4. Whether or not the Court of Appeals acted with grave abuse of discretion tantamount to lack of, or excess of, jurisdiction for overlooking the evidence presented by the petitioner for his confirmation of imperfect title and declaring that petitioner failed to prove specific acts of ownership for confirmation of his title.

5. Whether or not petitioner is entitled to confirmation of title over the property subject matter of this petition.[34]

The Court addresses foremost the procedural issue of whether petitioner's Motion for Reconsideration should have been admitted by the Court of Appeals, for the jurisdiction of this Court over the instant Petition and the other substantive issues raised therein actually depends upon the resolution thereof.

Under Section 1, Rule 52 of the Rules of Court, a party may file a motion for reconsideration of a judgment or final resolution within 15 days from notice thereof, with proof of service on the adverse party.

There is no question that petitioner's Motion for Reconsideration in CA-G.R. CV No. 80705 was filed one day beyond the reglementary period for doing so. Atty. Beltran, petitioner's former counsel, received notice and a copy of the 22 February 2006 Decision of the Court of Appeals on **28 February 2006**, and had only until **15 March 2006** to file petitioner's Motion

[34] *Id.* at 103-104.

for Reconsideration thereof. However, Atty. Beltran filed said Motion on **16 March 2006**.

The 15-day reglementary period for filing a motion for reconsideration is non-extendible.[35] Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses. Strict compliance with such rules is mandatory and imperative.[36]

Indeed, there are cases where this Court allowed the liberal application of procedural rules, but these are exceptions, sufficiently justified by meritorious and exceptional circumstances attendant therein. Not every entreaty for relaxation of rules of procedure shall be so lightly granted by the Court for it will render such rules inutile. In *Hon. Fortich v. Hon. Corona*,[37] the Court had the occasion to explain that:

> Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. **While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.** There have been some instances wherein this Court allowed a relaxation in the application of the rules, but **this flexibility was "never intended to forge a bastion for erring**

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[35] *Philippine Coconut Authority v. Garrido*, 424 Phil. 904, 909 (2002).

[36] *Tan v. Tan*, G.R. No. 133805, 29 June 2004, 433 SCRA 44, 49, citing *Basco v. Court of Appeals*, 383 Phil. 671, 685-686 (2000). *Macabingkil v. People's Homesite and Housing Corp.*, 164 Phil. 328, 340-341 (1976).

[37] 359 Phil. 210, 220 (1998).

litigants to violate the rules with impunity." A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances. (Emphasis ours.)

Upon petitioner, thus, falls the burden of proving to the satisfaction of the Court that cogent reasons exist herein to excuse his non-compliance with the reglementary period for filing a motion for reconsideration. Unfortunately, petitioner utterly failed in this regard.

Petitioner can only invoke the supposed excusable negligence of Atty. Beltran, his former counsel in CA-G.R. CV No. 80705. Petitioner points out that his Motion for Reconsideration was dated and ready as of 12 March 2006, yet Atty. Beltran was grossly negligent in filing said Motion only on 16 March 2006. For his part, Atty. Beltran manifested before the appellate court that he filed petitioner's Motion for Reconsideration a day late because his maid, who received the notice and copy of the 22 February 2006 Decision in CA-G.R. CV No. 80705, did not immediately place the same on his desk.

A client is generally bound by the mistakes of his lawyer, otherwise, there would never be an end to a suit as long as a new counsel could be employed who could allege and show that the prior counsel had not been sufficiently diligent or experienced or learned.[38] While it is true that excusable negligence is one of the recognized grounds for a motion for new trial or reconsideration,[39] there can be no excusable negligence when ordinary prudence could have guarded against it.[40]

The Court imposes upon the attorney the duty, to himself and to his clients, to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record. The attorney must so arrange matters that communications sent by mail, addressed to his office or

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[38] *Tesoro v. Court of Appeals*, 153 Phil. 580, 588 (1973).

[39] Rule 37, Rules of Court.

[40] *Amil v. Court of Appeals*, 374 Phil. 659, 665 (1999).

residence, may reach him promptly.[41] In earlier cases, the Court did not excuse a counsel's tardiness in complying with reglementary periods for filing pleadings attributed to the negligence of said counsel's secretary[42] or clerk.[43] In the same light, the Court can neither sanction the late filing by Atty. Beltran of the Motion for Reconsideration in CA-G.R. CV No. 80705 which he blamed on his maid, nor free petitioner from the effect of Atty. Beltran's *faux pas*.

A petition for reconsideration on the ground of excusable negligence is addressed to the sound discretion of the court. This discretion can not be interfered with except in a clear case of abuse.[44] Taking into account all the circumstances of the instant case, the Court finds no such abuse committed by the Court of Appeals in refusing to admit and act on petitioner's Motion for Reconsideration since the judgment subject of said Motion had already become final upon the lapse of the 15-day reglementary period for the filing of the same. At that point, the appellate court had already lost jurisdiction over the case and the subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment nor restore jurisdiction which had already been lost.[45]

That the Motion for Reconsideration was filed only a day late is of no moment. The Court had previously refused to admit motions for reconsideration which were filed only one[46] or two[47] days late.

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[41] *Republic v. Arro*, G.R. No. L-48241, 11 June 1987, 150 SCRA 625, 630.

[42] *Id*.

[43] *Fabella v. Tancinco*, 86 Phil. 543, 547 (1950).

[44] *Id.* at 548.

[45] *Bolaños v. Intermediate Appellate Court*, G.R. No. 68458, 7 August 1985, 138 SCRA 99, 104.

[46] *Philippine Coconut Authority v. Garrido*, *supra* note 35 at 909.

[47] *Vda. De Victoria v. Court of Appeals*, G.R. No. 147550, 26 January 2005, 449 SCRA 319, 330-331.

Without a motion for reconsideration of the 22 February 2006 Decision in CA-G.R. CV No. 80705 having been timely filed with the Court of Appeals, petitioner had also lost his right to appeal the said Decision to this Court. For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.[48]

Petitioner's Motion for Reconsideration, being filed beyond the reglementary period, did not toll the Decision dated 22 February 2006 of the Court of Appeals in CA-G.R. CV No. 80705 from becoming final and executory. As such the Decision is past appellate review and constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.[49]

The Court is without jurisdiction to modify, much less, reverse, a final and executory judgment. It has been pronounced by the Court in *Paramount Vinyl Products Corporation v. National Labor Relations Commission*[50] that:

> Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. **Failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment** [*Cruz v. WCC*, G.R. No. L-42739, January 31, 1978, 81 SCRA 445; *Volkshel Labor Union v. NLRC*, G.R. No. L-39686, June 28, 1980, 98 SCRA 314; *Acda v. Minister of Labor*, G.R. No. 51607, December 15, 1982, 119 SCRA 306; *Rizal Empire Insurance Group v. NLRC*, G.R. No. 73140, May

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[48] *Insular Life Assurance Co., Ltd v. National Labor Relations Commission*, G.R. No. 74191, 21 December 1987, 156 SCRA 740, 746.

[49] *Melotindos v. Tobias*, 439 Phil. 910, 916 (2002).

[50] G.R. No. 81200, 17 October 1990, 190 SCRA 525, 533-534.

29, 1987, 150 SCRA 565; *MAI Philippines Inc. v. NLRC*, G.R. No. 73662, June 18, 1987, 151 SCRA 196; *Narag v. NLRC*, G.R. No. 69628, October 28, 1987, 155 SCRA 199; *John Clement Consultants, Inc. v. NLRC*, G.R. No. 72096, January 29, 1988, 157 SCRA 635; *Bongay v. Martinez*, G.R. No. 77188, March 14, 1988, 158 SCRA 552; *Manuel L. Quezon University v. Manuel L. Quezon Educational Institution*, G.R. No. 82312, April 19, 1989, 172 SCRA 597]. This rule "is applicable indiscriminately to one and all since **the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law**" [*Volkschel Labor Union v. NLRC, supra*, at p. 322]. Although, in a few instances, the Court has disregarded procedural lapses so as to give due course to appeals filed beyond the reglementary period (See *Flexo Manufacturing Corporation v. NLRC*, G.R. No. 55971, February 28, 1985,135 SCRA 145; *Firestone Tire & Rubber Co. v. Lariosa*, G.R. No. 70479, February 27, 1989, 148 SCRA 187; *Chong Guan Trading v. NLRC*, G.R. No. 81471, April 26, 1989, 172 SCRA 831], the Court did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. (Emphasis ours.)

It is clear from the foregoing that the unjustified delay in the filing of petitioner's Motion for Reconsideration in CA-G.R. CV No. 80705 is not just a procedural lapse, but also a jurisdictional defect which effectively prevents this Court from taking cognizance of the Petition at bar.

Petitioner cannot claim that he has been deprived of due process. He was able to fully participate in the proceedings before the Court of Appeals in CA-G.R. CV No. 80705. The Court of Appeals actually took into consideration petitioner's evidence when it rendered its Decision dated 22 February 2006; only, it found that said evidence failed to establish specific acts of ownership over the subject property in compliance with the possessory requirements of the law for an imperfect title. Petitioner was not arbitrarily deprived of his right to file a motion for reconsideration of the Decision dated 22 February 2006 of the Court of Appeals; petitioner failed to avail himself of such a remedy within the reglementary period prescribed by law.

Moreover, even if, for the sake of argument, the Court can take cognizance of the present Petition in its appellate jurisdiction, it would still deny the same for lack of merit.

Section 48 of the Public Land Act, as amended by Presidential Decree No. 1073, specifically identifies the persons who are entitled to the judicial confirmation or legalization of their imperfect or incomplete title to the land, to wit —

> Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:
>
> (a) [Repealed by Presidential Decree No. 1073].
>
> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, since **June 12, 1945, or earlier**, immediately preceding the filing of the applications for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.
>
> (c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture whether disposable or not, under a *bona fide* claim of ownership since June 12, 1945 shall be entitled to the rights granted in subsection (b) hereof. (Emphasis ours.)

It is true that petitioner was able to present testimonial evidence that his predecessors-in-interest had possessed the land prior to 12 June 1945 or even earlier. Nevertheless, it must be stressed that also by petitioner's own evidence, particularly, the Certification dated 5 February 2002 issued by the Urban Forestry and Law Enforcement Unit of the DENR-NCR, it has been established

that the subject property became alienable and disposable only on **3 January 1968** by virtue of Forestry Administrative Order No. 4-1141. It is already settled that any period of possession prior to the date when the subject property was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession; such possession can never ripen into ownership and unless the land had been classified as alienable and disposable, the rules on confirmation of imperfect title shall not apply thereto.[51]

It is also worthy to point out that petitioner's insistence that the subject property and the other surrounding properties are being used for residential purposes does not work in his favor, and even militates against him. Taken together with the declaration, for realty tax purposes, by petitioner himself that the subject property is bamboo land, as well as the claim of respondent LLDA that the same property is part of the Laguna Lake bed, there is an apparent and unsettled confusion on the proper classification of the subject property.

The classification of the subject property is important for it determines the applicable statutory requirements and procedures for the proper disposition thereof. Confirmation or legalization of an imperfect or incomplete title under Section 48, Title II of the Public Land Act, as amended, applies only to agricultural lands. Lands of the public domain for residential, commercial, or industrial purposes,[52] on the other hand, are governed by Sections 58 to 68,

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[51] *Republic v. Herbieto*, G.R. No. 156117, 26 May 2005, 459 SCRA 183, 201-202; *Almeda v. Court of Appeals*, G.R. No. 85322, 30 April 1991, 196 SCRA 476, 480-481; *Vallarta v. Intermediate Appellate Court*, G.R. No. 74957, 30 June 1987, 151 SCRA 679, 690; *Republic v. Court of Appeals*, G.R. No. L-40402, 16 March 1987, 148 SCRA 480, 492.

[52] According to Section 59 of the Public Land Act, as amended, the lands disposable under Title III shall be classified as follows:

(a) Lands reclaimed by the Government by dredging, filling, or other means;

(b) Foreshore;

(c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

(d) Lands not included in any of the foregoing classes.

Title III of the same statute. Without a definite classification of the subject property, there results reasonable doubt as to the appropriate legal means for petitioner to acquire title to the same.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. Costs against the petitioner Roberto Y. Ponciano, Jr.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Velasco, Jr.,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 175162. October 29, 2008]

ATTY. ERNESTO A. TABUJARA III and CHRISTINE S. DAYRIT, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and DAISY AFABLE**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; STRICT AND RIGID APPLICATION OF RULES WHICH WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL

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[*] Per Special Order No. 531, dated 20 October 2008, signed by Acting Chief Justice Leonardo A. Quisumbing, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on leave.

[**] Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

[***] Justice Presbitero J. Velasco, Jr. was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 12 March 2008.

JUSTICE MUST ALWAYS BE AVOIDED. — The present controversy involved petitioner's sacrosanct right to liberty, which is protected by the Constitution. No person should be deprived of life, liberty, or property without due process of law. 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 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. 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. The Court of Appeals, thus, erred in dismissing petitioner's petition for review. By dismissing the said Petition, the Court of Appeals absolutely foreclosed the resolution of all the substantive issues petitioners were repeatedly attempting to raise before the Court of Appeals.

2. POLITICAL LAW; CONSTITUTIONAL LAW; WARRANT OF ARREST; WHEN IT MAY ISSUE. — Section 2, Article lll,

of the 1987 Constitution, provides: SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. It is constitutionally mandated that a warrant of arrest shall issue only upon finding of probable cause personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he/she may produce, and particularly describing the person to be seized.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; TO DETERMINE EXISTENCE OF A PROBABLE CAUSE, A PRELIMINARY INVESTIGATION IS CONDUCTED. — To determinate the existence of probable cause, a preliminary investigation is conducted. A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. A preliminary investigation is required to be conducted *before* the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and 1 day without regard to the fine. Thus, for cases where the penalty prescribed by law is lower than 4 years, 2 months and 1 day, a criminal complaint may be filed directly with the prosecutor or with the Municipal Trial Court. In either case, the investigating officer (*i.e.*, the prosecutor or the Municipal Trial Court Judge) is still required to adhere to certain procedures for the determination of probable cause and issuance of warrant of arrest.

4. ID.; ID.; ID.; SAME PROCEDURE IS OBSERVED FOR CASES NOT REQUIRING A PRELIMINARY INVESTIGATION. — In the instant case, respondent directly filed the criminal complaints against petitioners for grave coercion and trespass to dwelling before the Municipal Trial Court. The penalty prescribed by law for both offenses is *arresto mayor*, which ranges from 1 month and 1 day to 6 months. Thus Section 9, Rule 112 of the Rules of Court applies, to wit: SEC. 9. *Cases*

not requiring a preliminary investigation nor covered by the Rule on Summary Procedure. — x x x (b) *If filed with the Municipal Trial Court.* — 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 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.** Corollarily, Section 6 of the same Rule provides: Sec. 6. *When warrant of arrest may issue.* — x x x (b) *By the Municipal Trial Court.* — x x x [T]he judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

5. ID.; ID.; ID.; ID.; CASE AT BAR. — Clearly, Judge Adriatico gravely abused his discretion in issuing the assailed 2 May 2000 and 14 July 2000 Orders finding probable cause to hold petitioners liable for trial and to issue warrants of arrest because it was based *solely* on the statement of witness Mauro De Lara whom Judge Adriatico did not personally examine in writing and under oath; neither did he propound searching questions. He merely stated in the assailed 2 May 2000 Order that he overlooked the said statement of De Lara; nevertheless, without conducting a personal examination on said witness or propounding searching questions, Judge Adriatico still found De Lara's allegations sufficient to establish probable cause. Plainly, this falls short of the requirements imposed by no

less than the Constitution. x x x When the investigating judge relied *solely* on the affidavit of witness De Lara which was not sworn to before him and whom he failed to examine in the form of searching questions and answers, he deprived petitioners of the opportunity to test the veracity of the allegations contained therein. Worse, petitioners' arguments that De Lara's affidavit was hearsay were disregarded by the investigating judge despite the fact that the allegations therein were completely rebutted by petitioners' and their witnesses' affidavits, all of whom appeared before and were personally examined by the investigating judge. It was thus incorrect for the court *a quo* to rule thus: The accused' s contention that the statement of witness Mauro de Lara is bereft of credibility and that the complaints at bar were initiated merely for harassment purposes could be ventilated well in a full blown trial. In sum, De Lara's affidavit cannot be relied upon by the court *a quo* for its finding of probable cause.

6. ID.; ID.; WARRANTS OF ARREST; PROCEDURE TO DETERMINE PROBABLE CAUSE IN SECTION 6, RULE 112 IS MANDATORY. — The procedure described in Section 6 of Rule 112 is mandatory because failure to follow the same would amount to denial of due process. With respect to the issuance by inferior courts of warrants of arrest, it is necessary that the judge be satisfied that probable cause exists: 1) through an examination under oath and in writing of the complainant and his witnesses; which examination should be 2) in the form of searching questions and answers. This rule is not merely a procedural but a substantive rule because it gives flesh to two of the most sacrosanct guarantees found in the fundamental law: the guarantee against unreasonable searches and seizures and the due process requirement.

7. ID.; ID.; ID.; ID.; ISSUANCE OF WARRANTS OF ARREST NOT MANDATORY. — The issuance of warrants of arrest is not mandatory. The investigating judge must find that there is a necessity of placing the petitioners herein under immediate custody in order not to frustrate the ends of justice. Perusal of the records shows no necessity for the immediate issuance of warrants of arrest. Petitioners are not flight risk and have no prior criminal records.

8. ID.; ID.; RESTRAINING ORDER ISSUED BY RTC; EFFECT ON ORDER ISSUED DURING ITS EFFECTIVITY BY

FIRST LEVEL COURT; CASE AT BAR. — Respondent's contention that any defect in the 2 May 2000 and 14 July 2000 Orders of the court *a quo* has been cured by its 18 September 2000 Order is flawed. It will be recalled that on 15 September 2000, petitioners filed a petition for *certiorari* before the Regional Trial Court of Meycauayan, Bulacan. On 18 September 2000, Executive Judge Manalastas issued a temporary restraining order enjoining the court *a quo* from conducting further proceedings in Criminal Cases Nos. 99-29037 and 99-29038. However, in contravention of said restraining order, the court *a quo* issued its Order on even date, *i.e.*, 18 September 2000, finding probable cause against petitioners holding them liable for trial and ordering the issuance of warrants of arrest. Considering that the court *a quo's* 18 September 2000 Order was issued during the effectivity of the temporary restraining order, the same is considered of no effect.

APPEARANCES OF COUNSEL

Tabujara and Associates Law Offices for petitioners.
The Solicitor General for public respondent.
Celestino Hilvano for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This petition assails the 24 February 2004 Decision of the Court of Appeals in CA-G.R. SP No. 63280 denying petitioners' petition for review and directing the Municipal Trial Court of Meycauayan, Bulacan, Branch 11, to proceed with the trial of Criminal Cases Nos. 99-29037 and 99-29038, as well as the 23 October 2006 Resolution denying the motion for reconsideration.

The antecedent facts are as follows:

On 17 September 1999, respondent Daisy Dadivas-Afable simultaneously filed two criminal complaints against petitioners for Grave Coercion and Trespass to Dwelling. The complaints read, thus:

Art. 286 (Grave Coercion)

That on the 14th day of September 1999 at around 6:00 o'clock in the morning more or less, in Brgy. Iba, Municipality of Meycauayan, Province of Bulacan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, by conspiring, confederating and mutually helping to (sic) one another, did then and there willfully, unlawfully and feloniously forced to go with them one DAISY DADIVAS-AFABLE and against the latter's will.

Art. 280, par. 2 (Trespass to Dwelling)

That on the 14th day of September 1999 at around 6:00 o'clock in the morning more or less, in Brgy. Iba, Municipality of Meycauayan, Province of Bulacan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then a (sic) private persons, by conspiring, confederating and mutually helping to (sic) one another, did then and there willfully, unlawfully and feloniously enter the house owned by one DAISY DADIVAS-AFABLE by opened the gate and against the latter's will.[1]

On 18 October 1999, petitioners filed their Joint Counter-Affidavit.[2] Thereafter, or on 21 December 1999, petitioner Tabujara filed a Supplemental Counter-Affidavit.[3]

Petitioners denied the allegations against them. They argued that on 14 September 1999, they went to the house of respondent to thresh out matters regarding some missing pieces of jewelry. Respondent was a former employee of Miladay Jewels, Inc., a company owned by the Dayrits and who was then being administratively investigated in connection with missing jewelries. Despite several summons to appear, respondent went on AWOL (absence without official leave).

Judge Calixtro O. Adriatico of the Municipal Trial Court of Meycauayan, Bulacan, Branch II, conducted the preliminary examination. On 7 January 2000, he issued an Order dismissing the complaints for lack of probable cause, thus:

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[1] *Rollo*, pp. 30-31.

[2] *Id.* at 35-39.

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

After a careful perusal of the allegation setforth in the complaint-affidavit, taking into consideration the allegation likewise setforth in the counter-affidavit submitted by the respondents and that of their witnesses, the Court finds no probable cause to proceed with trial on the merits of the above-entitled cases.

The Court believes and so holds that the instant complaints are merely leverage to the estafa[4] case already filed against private complainant herein Daisy Afable by the Miladay Jewels Inc. wherein respondent Atty. Tabujara III is its legal counsel; while respondent Dayrit appears to be one of the officers of the said company.

As could be gleaned from the record, private complainant herein Daisy Afable is being charged with the aforestated estafa case for having allegedly embezzled several pieces of jewelry from the Miladay Jewels, Inc., worth ₱2,177,156.00.

WHEREFORE, let these cases be dismissed for lack of probable cause.[5]

Respondent filed a Motion for Reconsideration alleging that when she filed the complaints for grave coercion and trespass to dwelling on 17 September 1999 against petitioners, no

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[4] Entitled *People of the Philippines v. Daisy Afable*. Respondent was charged for Estafa. In an Information dated 18 November1999 docketed as Criminal Case No. 00-078. (*Rollo*, p. 90.) A warrant for the arrest of private respondent dated 24 January 2000 was issued by the RTC of Makati. (*Rollo*, p. 92.) On 25 March 2003, the RTC Branch 142 Makati rendered a decision finding respondent guilty beyond reasonable doubt of the crime of Estafa. (CA *rollo*, p. 237.) This conviction was affirmed in the decision of the Court of Appeals dated 27 March 2007 in CA-G.R. CR No. 27515. Respondent elevated the case to this Court (G.R. No. 181047) but her petition was denied in this Court's resolution dated 24 March 2008.

Respondent also filed a Complaint for Illegal dismissal against Miladay Jewels Inc represented by its president Michelle Dayrit Soliven docketed as NLRC NCR Case No. 30-12-00756-99 which the labor arbiter decided on 13 October 2000. (CA *rollo* p. 260.) The records are silent as to the status of this case. Respondent filed two additional cases for Grave coercion and grave threats against petitioner Tabujara and the other Dayrit sisters, Michelle and Yvonne before the Makati City Prosecutors office which was dismissed by resolution of the Prosecutor's Office on 20 July 2000. (CA *rollo*, p. 244.)

[5] *Rollo*, p. 77.

information for estafa has yet been filed against her. In fact, the information was filed on 5 October 1999.

In their Opposition to the Motion for Reconsideration, petitioners argued that even before respondent filed the criminal complaints for grave coercion and trespass to dwelling, she was already being administratively investigated for the missing jewelries; that she was ordered preventively suspended pending said investigation; that the theft of the Miladay jewels was reported to the Makati Police on 7 September 1999 with respondent Afable being named as the primary suspect; that on 17 September 1999, which corresponded to the date of filing of the criminal complaints against petitioners, the employment of respondent with Miladay Jewels, Inc. was terminated. Petitioners further alleged that respondent filed the criminal complaints for grave coercion and trespass to dwelling as leverage to compel petitioners to withdraw the estafa case.

On 2 May 2000, Judge Adriatico issued an Order reversing his earlier findings of lack of probable cause. This time, he found probable cause to hold petitioners for trial and to issue warrants of arrest, thus:

> Acting on the "Motion for Reconsideration" filed by the private complainant herein on January 17, 2000, with "Opposition…" filed by the accused on January 27, 2000, taking into consideration the "Manifestation/Brief Memorandum" filed by the said private complainant on March 4, 2000, the Court found cogent reason to reconsider its order dated January 7, 2000.
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> The sworn allegation/statement of witness Mauro V. de Lara, which was inadvertently overlooked by the undersigned, and which states, among other things, that said witness saw the private complainant herein being forcibly taken by three persons, referring very apparently to the accused herein, from her residence is already sufficient to establish a *prima facie* evidence or probable cause against the herein accused for the crimes being imputed against them. It is likewise probable that accused herein could have committed the crime charged in view of their belief that the private complainant herein had something to do with the alleged loss or embezzlement of jewelries of the Miladay Jewels.

WHEREFORE, in order to ferret out the truth/veracity of the complainant's allegation and in order not to frustrate the ends of justice, let the above-entitled cases now be set for trial.

Let therefore warrant of arrest be issued against all the accused in Criminal Case No. 99-29038 (Grave Coercions), fixing their bail for their provisional liberty in the amount of ₱12,000.00 for each of them.

As regard Criminal Case No. 99-29037 (Trespass to Dwelling) the same shall be governed by the Rules on Summary Procedure.[6]

Petitioners filed a motion for reconsideration insisting that the alleged affidavit of Mauro V. de Lara on which the court *a quo* based its findings of probable cause was hearsay because it was not sworn before Judge Adriatico; that De Lara did not personally appear before the investigating judge during preliminary investigation. However, petitioners' motion for reconsideration was denied in the Order dated 14 July 2000, thus:

Acting on the "Motion for Reconsideration" filed by the accused, thru counsel. With comment from the counsel of the private complainant, the Court resolves to deny the same there being no cogent reason to reconsider the Court order dated May 2, 2000.

The Court has resolved to try the above-entitled cases on the merits so as to ferret out the truth of the private complainant's allegations and there being probable cause to warrant criminal prosecution of the same.

The accused's contention that the statement of witness Mauro de Lara is bereft of credibility and that the complaints at bar were initiated merely for harassment purposes could be ventilated well in a full blown trial.

WHEREFORE, in view of the foregoing reason, let the trial of these cases proceed as already scheduled.[7]

Petitioners moved for clarificatory hearings which were conducted on 23 August 2000 and 31 August 2000. However, before the court *a quo* could render a resolution based on said

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[6] *Id.* at 94.

[7] *Id.* at 107.

clarificatory hearings, petitioners filed on 15 September 2000 a petition for *certiorari* before the Regional Trial Court with prayer for issuance of temporary restraining order and writ of preliminary injunction.[8] Petitioners sought to annul the 2 May 2000 and 14 July 2000 Orders of the court *a quo* for having been issued with grave abuse of discretion. Petitioners argued that the court *a quo* gravely abused its discretion in issuing said Orders finding probable cause and ordering the issuance of warrants of arrest based solely on the unsworn statement of Mauro V. de Lara who never appeared during preliminary investigation and who was not personally examined by the investigating judge.

On 18 September 2000, Executive Judge Danilo A. Manalastas of the Regional Trial Court of Malolos, Bulacan, Branch 7, issued an Order[9] granting a 72-hour temporary restraining order and enjoining the Municipal Trial Court from proceeding with the prosecution of petitioners in Criminal Case Nos. 99-29037 and 99-29038.

The case was thereafter raffled to Branch 79 which rendered its Decision[10] denying the petition for annulment of the 2 May 2000 and 14 July 2000 Orders of the Municipal Trial Court. The Regional Trial Court found that after conducting clarificatory hearings, the court *a quo* issued an Order on 18 September 2000, finding probable cause. The Regional Trial Court further ruled that any defect in the issuance of the 2 May 2000 and 14 July 2000 Orders finding probable cause based **solely** on the unsworn statement of Mauro V. de Lara who failed to appear during the preliminary examination and who was not personally examined by the investigating judge, was cured by the issuance of the **18 September 2000** Order. The Regional Trial Court reasoned, thus:

> While it is true that respondent Judge Hon. Calixto O. Adriatico dismisses both criminal cases last January 7, 2000 finding no probable cause and later on reverse himself by issuing the question Order

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[8] *Id.* at 108-120.

[9] *Id.* at 121-122; penned by Judge Danilo A. Manalastas.

[10] *Id.* at 127-145; penned by Judge Arturo G. Tayag.

dated May 2, 2000 alleging among others that said Judge inadvertently overlooked the statement of witness Mauro V. De Lara, the stubborn facts remain that whatever defects, or shortcomings on the parts of the respondent Judge was cured when he conducted clarificatory examination on the dates earlier mentioned in this Order.[11]

The dispositive portion of the Decision of the Regional Trial Court, reads:

RESPONSIVE OF ALL THE FOREGOING, the instant Petition for the Annulment of the Orders of the respondent Judge dated May 2, 2000 and July 14, 2000 in Criminal Cases Nos. 99-29037 and 99-29038 (MTC-Meycauayan, Branch 2) should be as it is hereby denied for lack of merit.

ACCORDINGLY, the Presiding Judge of branch II, the Hon. Calixto O. Adriatico may now proceed to hear and decide crim. Cases nos. 99-29037 and 99-29038 pending before that Court.[12]

Petitioners filed a Petition for Review before the Court of Appeals asserting that the court *a quo* acted with grave abuse of discretion in basing its findings of probable cause and ordering the issuance of warrants of arrest solely on the unsworn statement of Mauro De Lara who never appeared during preliminary investigation and who was not personally examined by the investigating judge. Moreover, they argued that the 18 September 2000 Order was void because it was issued by the Municipal Trial Court while the temporary restraining order issued by the Regional Trial Court enjoining the court *a quo* to proceed further with the criminal complaints was in force.

However, the Court of Appeals denied the petition on the ground that petitioners resorted to the wrong mode of appeal; *i.e.*, instead of an ordinary appeal, petitioners filed a petition for review.[13] The dispositive portion of the Decision of the Court of Appeals, reads:

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[11] *Id.* at 144.

[12] *Id.* at 145.

[13] *Id.* at 147-157. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Romeo A. Brawner and Rebecca De Guia-Salvador, concurring.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DENIED. The Municipal Trial Court of Meycauayan, Bulacan, Branch II is directed to proceed with the trial of Criminal Case Nos. 99-29037 and 99-29038 and to dispose of them with deliberate dispatch.[14]

Petitioners filed a motion for reconsideration but it was denied.[15] Hence, the instant petition raising the following assignment of errors:

I.

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE TRIAL COURT HAD ACTED WITH GRAVE ABUSE OF DISCRETION IN BASING ITS FINDING OF PROBABLE CAUSE TO HOLD PETITIONERS FOR TRIAL ON THE MERITS AND ISSUANCE OF WARRANTS OF ARREST AGAINST THEM, UPON AN UNSWORN STATEMENT OF A WITNESS WHO NEVER APPEARED BEFORE, NOR WAS PERSONALLY EXAMINED BY, THE TRIAL COURT.

A. THE CONSTITUTION GUARANTEES THAT NO WARRANT OF ARREST SHALL ISSUE EXCEPT UPON PROBABLE CAUSE TO BE DETERMINED PERSONALLY BY THE JUDGE AND AFTER PERSONALLY EXAMINING UNDER OATH THE COMPLAINANT AND WITNESSES.

II.

PETITIONERS ASSERT THEIR RIGHT GUARANTEED BY THE CONSTITUTION WHICH TAKES PRECEDENCE OVER RULES OF PROCEDURE OR TECHNICALITIES.

A. IT IS WELL-SETTLED THAT THIS HONORABLE COURT IS BOUND BY THE ALLEGATIONS IN THE PETITION AND NOT BY ITS CAPTION.[16]

Petitioners insist that the Orders of the court *a quo* dated 2 May 2000 and 14 July 2000 should be annulled for having

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[14] *Id.* at 157.

[15] *Id.* at 176-178. Penned by Associate Justice Regalado E. Maambong with Associate Justices Marina L. Buzon and Japar B. Dimaampao, concurring.

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

been issued with grave abuse of discretion because the finding of probable cause was based solely on the unsworn statement of Mauro De Lara who never appeared during the preliminary examination. Petitioners also allege that since De Lara never appeared before the investigating judge, his statement was hearsay and cannot be used as basis for finding probable cause for the issuance of warrant of arrest or to hold petitioners liable for trial. Granting that the statement of De Lara was subscribed before "Judge Paguio," the same cannot be used as basis because the law requires that the statement be sworn to before the investigating judge and no other.

In its Comment, respondent People of the Philippines argue that the Court of Appeals correctly dismissed petitioners' petition because they resorted to the wrong mode of appeal.

On the other hand, respondent avers that the issue on the propriety of the issuance by the court *a quo* of the 2 May 2000 and 14 July 2000 Orders has become moot because clarificatory hearings were thereafter conducted and another Order dated 18 September 2000 was issued finding probable cause against petitioners; and, that the statement of Mauro De Lara was subscribed and sworn to before Judge Orlando Paguio although it was Judge Calixtro Adriatico who acted as the investigating judge.

The petition is meritorious.

Before proceeding to the substantive issues, we first address the issue of whether or not the Court of Appeals properly denied the petition for review filed by the petitioners under Rule 42 of the Rules of Court.

In denying the petition for review under Section 1,[17] Rule 42 of the 1997 Rules of Court filed by petitioners, the appellate

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[17] SECTION 1. *How appeal taken; time for filing*. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its **appellate jurisdiction** may file a verified **petition for review** with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with

court stressed that they availed of the wrong mode of review in bringing the case to it since the petitioners filed an original action under Rule 65 of the Rules of Court to the RTC, the remedy availed of should have been an appeal under Section 2(a) of Rule 41 of the Rules of Court:

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. (Emphasis supplied.)

It is only when the decision of the RTC was rendered in the exercise of appellate jurisdiction would a petition for review under Rule 42 be proper.[18]

We do not agree in the conclusion arrived at by the Court of Appeals.

The present controversy involved petitioners' sacrosanct right to liberty, which is protected by the Constitution. No person should be deprived of life, liberty, or property without due process of law.[19]

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a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[18] *De Liano v. Court of Appeals*, 421 Phil. 1033, 1049-1050 (2001).

[19] PHILIPPINE CONSTITUTION, Article III, Section 1; *Macasasa v. Sicad*, G.R. No. 146547, 20 June 2006, 491 SCRA 368, 383.

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.[20]

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.[21]

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.[22]

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.[23]

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[20] *Wack Wack Golf and Country Club v. National Labor Relations Commission*, G.R. 149793, 15 April 2005, 456 SCRA 280, 294.

[21] *Id*.

[22] *Neypes v. Court of Appeals*, G.R. No. 141524, 14 September 2005, 469 SCRA 633, 643.

[23] *Peñoso v. Dona*, G.R. No. 154018, 3 April 2007, 520 SCRA 232, 240-241.

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. The Court of Appeals, thus, erred in dismissing petitioners' petition for review. By dismissing the said Petition, the Court of Appeals absolutely foreclosed the resolution of all the substantive issues petitioners were repeatedly attempting to raise before the Court of Appeals.

We now proceed to the resolution of the substantive issues raised by the petitioners.

Section 2, Article III, of the 1987 Constitution, provides:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

It is constitutionally mandated that a warrant of arrest shall issue only upon finding of probable cause personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he/she may produce, and particularly describing the person to be seized.

To determine the existence of probable cause, a preliminary investigation is conducted. A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[24]

A preliminary investigation is required to be conducted *before* the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and 1 day without regard to the fine.[25] Thus, for cases where the

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[24] RULES OF COURT, Rule 112, Sec. 1.

[25] *Id*.

penalty prescribed by law is lower than 4 years, 2 months and 1 day, a criminal complaint may be filed directly with the prosecutor or with the Municipal Trial court. In either case, the investigating officer (*i.e.*, the prosecutor or the Municipal Trial Court Judge) is still required to adhere to certain procedures for the determination of probable cause and issuance of warrant of arrest.

In the instant case, respondent directly filed the criminal complaints against petitioners for grave coercion and trespass to dwelling before the Municipal Trial Court. The penalty prescribed by law for both offenses is *arresto mayor,* which ranges from 1 month and 1 day to 6 months. Thus, Section 9, Rule 112 of the Rules of Court applies, to wit:

SEC. 9. *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 filed with the Municipal Trial Court.* — 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 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.)

Corollarily, Section 6 of the same Rule provides:

SEC. 6. *When warrant of arrest may issue.* — x x x

(b) *By the Municipal Trial Court.* — x x x [T]he judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

Clearly, Judge Adriatico gravely abused his discretion in issuing the assailed 2 May 2000 and 14 July 2000 Orders finding probable cause to hold petitioners liable for trial and to issue warrants of arrest because it was based *solely* on the statement of witness Mauro De Lara whom Judge Adriatico did not personally examine in writing and under oath; neither did he propound searching questions. He merely stated in the assailed 2 May 2000 Order that he overlooked the said statement of De Lara; nevertheless, without conducting a personal examination on said witness or propounding searching questions, Judge Adriatico still found De Lara's allegations sufficient to establish probable cause. Plainly, this falls short of the requirements imposed by no less than the Constitution.

In *Sangguniang Bayan of Batac v. Judge Albano*,[26] the Court found respondent judge guilty of ignorance of the law because he failed to comply with the procedure on the issuance of warrant of arrest, thus:

Failure to comply with such procedure will make him administratively liable. In the case at bar, **respondent judge issued several warrants of arrest without examining the complainant and his witnesses in writing and under oath, in violation of Section 6 of Rule 112** which provides:

Sec. 6. When warrant of arrest may issue. — x x x

(b) By the Municipal Trial Court. — If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest.

[26] 329 Phil. 363, 374-375 (1996).

The records show that respondent judge has violated the rules on preliminary investigation and issuance of a warrant of arrest since the start of his term as municipal judge in Batac, Ilocos Norte in September 1991. The gross ignorance of respondent judge has immensely prejudiced the administration of justice. Parties adversely affected by his rulings dismissing their complaints after preliminary investigation have been denied their statutory right of review that should have been conducted by the provincial prosecutor. **His practice of issuing warrants of arrest without examining the complainants and their witnesses is improvident and could have necessarily deprived the accused of their liberty however momentary it may be.** Our Constitution requires that all members of the judiciary must be of proven competence, integrity, probity and independence. Respondent judge's stubborn adherence to improper procedures and his constant **violation of the constitutional provision requiring him to personally examine the complainant and the witness in writing and under oath before issuing a warrant of arres**t makes him unfit to discharge the functions of a judge.

When the investigating judge relied *solely* on the affidavit of witness De Lara which was not sworn to before him and whom he failed to examine in the form of searching questions and answers, he deprived petitioners of the opportunity to test the veracity of the allegations contained therein. Worse, petitioners' arguments that De Lara's affidavit was hearsay was disregarded by the investigating judge despite the fact that the allegations therein were completely rebutted by petitioners' and their witnesses' affidavits, all of whom appeared before and were personally examined by the investigating judge. It was thus incorrect for the court *a quo* to rule thus:

> The accused's contention that the statement of witness Mauro de Lara is bereft of credibility and that the complaints at bar were initiated merely for harassment purposes could be ventilated well in a full blown trial.[27]

In sum, De Lara's affidavit cannot be relied upon by the court *a quo* for its finding of probable cause.

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[27] *Rollo,* p. 107.

In addition, this Court finds that the warrants of arrest were precipitously issued against petitioners. Deprivation of a citizen's liberty through the coercive process of a warrant of arrest is not a matter which courts should deal with casually. Any wanton disregard of the carefully-wrought out processes established pursuant to the Constitution's provisions on search warrants and warrants of arrest is a serious matter primarily because its effects on the individual wrongly-detained are virtually irremediable.[28]

The procedure described in Section 6 of Rule 112 is mandatory because failure to follow the same would amount to a denial of due process. With respect to the issuance by inferior courts of warrants of arrest, it is necessary that the judge be satisfied that probable cause exists: 1) through an examination under oath and in writing of the complainant and his witnesses; which examination should be 2) in the form of searching questions and answers. This rule is not merely a procedural but a substantive rule because it gives flesh to two of the most sacrosanct guarantees found in the fundamental law: the guarantee against unreasonable searches and seizures and the due process requirement.[29]

The issuance of warrants of arrest is not mandatory. The investigating judge must find that there is a necessity of placing the petitioners herein under immediate custody in order not to frustrate the ends of justice.[30] Perusal of the records shows no necessity for the immediate issuance of warrants of arrest. Petitioners are not flight risk and have no prior criminal records.

Respondent's contention that any defect in the 2 May 2000 and 14 July 2000 Orders of the court *a quo* has been cured by its 18 September 2000 Order is flawed. It will be recalled that on 15 September 2000, petitioners filed a petition for *certiorari* before the Regional Trial Court of Meycauayan, Bulacan. On 18 September 2000, Executive Judge Manalastas issued a

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[28] *Cabilao v. Judge Sardido,* 316 Phil. 134, 141 (1995).

[29] *Id.* at 142.

[30] *Bagunas v. Judge Fabillar,* 352 Phil. 206, 221 (1998).

temporary restraining order enjoining the court *a quo* from conducting further proceedings in Criminal Cases Nos. 99-29037 and 99-29038. However, in contravention of said restraining order, the court *a quo* issued its Order on even date, *i.e.,* 18 September 2000, finding probable cause against petitioners holding them liable for trial and ordering the issuance of warrants of arrest. Considering that the court *a quo's* 18 September 2000 Order was issued during the effectivity of the temporary restraining order, the same is considered of no effect.

WHEREFORE, the petition is *GRANTED*. The assailed 24 February 2004 Decision of the Court of Appeals in CA-G.R. SP No. 63280 denying petitioners' petition for review and directing the Municipal Trial Court of Meycauayan, Bulacan, Branch 11, to proceed with the trial of Criminal Cases Nos. 99-29037 and 99-29038, as well as the 23 October 2006 Resolution denying the motion for reconsideration, are *REVERSED* and *SET ASIDE*. The Municipal Trial Court of Meycauayan, Bulacan, Branch 11, is *DIRECTED* to dismiss Criminal Cases Nos. 99-29037 and 99-29038 for lack of probable cause and to quash the warrants of arrest against petitioners for having been irregularly and precipitously issued.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Nachura, JJ.,* concur.

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[*] Per Special Order No. 531, dated 20 October 2008, signed by Acting Chief Justice Leonardo A. Quisumbing, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on leave.

[**] Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

THIRD DIVISION

[G.R. No. 175692. October 29, 2008]

ANGEL UBALES *y* VELEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RULE THAT FOR EVIDENCE TO BE BELIEVED, IT MUST NOT ONLY PROCEED FROM THE MOUTH OF A CREDIBLE WITNESS, BUT MUST BE CREDIBLE IN ITSELF. — In the assessment of the testimonies of witnesses, this Court is guided by the rule that for evidence to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of juridical cognizance.

2. ID.; ID.; ID.; EYEWITNESS GALVAN'S VERSION OF THE FACTS RAISES VERY SERIOUS QUESTIONS. — At the onset, we can easily see that Galvan's version of the facts raises very serious questions. Why would Eduardo Galvan, a 65-year old man, stop one meter away from two quarreling men at the very dangerous hour of 3 a.m. and stay there to watch for three minutes as if what he was witnessing is a movie scene? How come neither Angel Ubales, nor Galvan's best friend, Mark, acknowledge Galvan's presence for the entire three minutes that they were all barely one meter from each other, and in a well-illuminated place at that? After Angel Ubales ran away following his shooting of Mark, why did Galvan simply leave his bloodied best friend to die on the pavement? We should take note that Eduardo Galvan could not claim to be afraid at this point, as he had already seen Angel Ubales flee. Furthermore, since it took an hour after killing before the presence of the dead body of Mark Santos was reported to the police, it can fairly be assumed that if Galvan's version of the facts were true, there were no other people at the scene of the crime.

Why was Galvan selling *balut* at a place with no pedestrian traffic at 3 a.m.? In reading Eduardo Galvan's testimony, it is hard to ignore how he seemed not to remember a lot of things about the places involved in his testimony. The original judge himself, Judge Romulo Lopez, does not seem impressed with the testimony of Eduardo Galvan. Judge Romulo Lopez asked several clarificatory questions in order to test Galvan's credibility, and Galvan failed the test miserably. Eduardo Galvan repeatedly changed his answer on whether he told anyone about the incident before he executed his statement with the police station.

3. ID.; ID.; MOTIVE; PROOF ESSENTIAL WHEN THE EVIDENCE ON THE COMMISSION OF THE CRIME IS PURELY CIRCUMSTANTIAL OR INCONCLUSIVE. —We have ruled that though the general rule is that motive is not essential to a conviction especially where the identity of the assailant is duly established by other competent evidence or is not disputed, the absence of such motive is important in ascertaining the truth as between two antagonistic theories or versions of the killing. Proof as to motive is essential when the evidence on the commission of the crime is purely circumstantial or inconclusive.

4. ID.; ID.; FLIGHT; EVIDENCES GUILT AND GUILTY CONSCIENCE; IN CASE AT BAR, ACCUSED-APPELLANT UBALES VOLUNTARILY WENT WITH THE POLICE INVESTIGATOR. — We also take note of petitioner Ubales' stance when he was confronted by Laila Cruz and SPO2 Fernandez. Ubales told SPO2 Fernandez that he would voluntarily join him to prove to him that he was not in hiding. Ubales then cooperated fully with SPO2 Fernandez, allowing himself to undergo a medical examination, which apparently yielded nothing as the findings thereof was not presented as evidence, and going with the SPO2 Fernandez to the PNP Malacañang Field Force. Flight evidences guilt and guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.

5. ID.; ID.; PROOF BEYOND REASONABLE DOUBT; PROSECUTION MUST NOT RELY ON WEAKNESS OF EVIDENCE OF DEFENSE BUT MUST PROVE ITS CASE BEYOND REASONABLE DOUBT. — We have said that it is better to acquit ten guilty individuals than to convict one

innocent person. Every circumstance against guilt and in favor of innocence must be considered. Where the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be given the benefit of doubt and should be acquitted. In the instant case, while it is possible that the accused has committed the crime, there is also the possibility, based on the evidence presented, that he has not. He should be deemed to have not for failure to meet the test of moral certainty. Finally, an accused should not be convicted by reason of the weakness of his alibi. It is fundamental that the prosecution must prove its case beyond reasonable doubt and must not rely on the weakness of the evidence of the defense. Since there are very serious doubts in the testimony of the lone eyewitness to the killing of Mark Santos, we have no choice but to acquit petitioner Angel Ubales on the ground of reasonable doubt.

APPEARANCES OF COUNSEL

Recalde Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

While the correctness of a Decision is not impaired solely by the fact that the writer took over from a colleague who had earlier presided at trial, it is the bounden duty of appellate courts to even more closely examine the testimonies of the witnesses whose deportment the writer was not able to observe.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] of the Court of Appeals in CA-G.R. CR No. 28813 dated 30 November 2006. The Court of Appeals affirmed with modification the

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid, concurring. *Rollo*, pp. 18-40.

Decision of the Regional Trial Court of Manila, Branch 33, in Criminal Case No. 01-196713 finding petitioner Angel Ubales *y* Velez (Ubales) guilty of the crime of homicide.

On 30 October 2001, the Assistant City Prosecutor filed an Information against petitioner Ubales for the crime of homicide allegedly committed as follows:

> That on or about October 17, 2001, in the City of Manila, Philippines, the said accused, armed with a .38 caliber *paltik* revolver marked Smith and Wesson, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one MARK TANGLAW SANTOS *y* ORPIANA by then and there shooting the latter on the head, thereby inflicting upon him mortal gun shot wound which was the direct and immediate cause of his death thereafter.[2]

On the same date, the Executive Judge issued an Order of Release in view of a personal bail bond filed by Ubales.

On 19 November 2001, petitioner Ubales, assisted by counsel, pleaded not guilty of the offense charged.

The prosecution presented as witnesses Eduardo Galvan, SPO1 Eduardo E. Ko, Laila Cherry Cruz, SPO2 Rosales M. Fernandez, P/Chief Inspector Carlos G. Mendez, and Efigenia Santos. The prosecution also presented as evidence Medico Legal Report No. W-737-2001 and the receipt of the funeral expenses incurred.

Laila Cherry Cruz, the sister of Mark Santos, testified that on 16 October 2001, at about 8 p.m., petitioner Ubales and the deceased Mark Santos (Mark) were drinking liquor in front of the victim's house at 4334 Interior 5 Albina Street, Sta. Mesa, Manila. They were with a group which included a certain Jon-Jon, Solo Perez, and Jojo Santos. In the course of their carousal, Ubales and Mark engaged in an argument about the former calling the latter's cousin a homosexual. Mark told Ubales not to meddle because he (Ubales) did not know what was happening within his (Mark's) family. The argument was soon apparently resolved, with Ubales patting the shoulders of Mark.

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[2] Records, p. 1.

The carousal ended at 1 a.m. the following day. Mark and Ubales went inside the house. Ubales asked permission from Laila Cruz to use their comfort room. Before Ubales went inside the comfort room, Laila Cruz saw Ubales place his gun with black stripes on top of the dining table. Mark asked permission from his mother to bring Ubales to his house in J.P. Laurel Street and also asked for money so that they could eat *lugaw* on their way there. Mark and Ubales then left.

Eduardo Galvan (Galvan), a 65-year old *balut* vendor and the best friend of the deceased Mark Santos, testified that at 3 a.m. in the morning of 17 October 2001, while he was selling *balut* near the Malacañang area, he saw Mark and Ubales quarreling around a meter away from him. The argument lasted for about three minutes, culminating with Ubales taking out his gun and shooting Mark on the head. Galvan is certain about this, as he was still only one meter away from Mark and Ubales when the former shot the latter, and the place was well-illuminated. When Mark fell, Ubales ran towards Atienza Street. Galvan also testified that he was an acquaintance of Ubales for about five months prior to the incident.

SPO1 Eduardo Ko testified that he was assigned as the night-shift investigator of the Homicide Section of the Western Police District (WPD) when he received a report at around 3:55 a.m. of 17 October 2001 that a body was found at Jose P. Laurel St. corner Matienza St., San Miguel, Manila. Upon arrival thereat, he, together with SPO1 Benito Cabatbat, saw Mark's body, which had no injury other than a gunshot wound on the forehead, lying on its left side. The gunshot appeared to have been fired at close range because it had powder burns around the entry of the wound. They proceeded to interview people at the scene, during which time a *barangay* official named Abraham Sison turned over a .38 Caliber snub nose *paltik* revolver with three live bullets and one empty shell. The gun was recovered several meters away from where the victim's body was found.

SPO2 Rosales Fernandez testified that at around 3 p.m. of 25 October 2001, while he was at home, Laila Cruz approached him and asked for his assistance in apprehending Ubales who

was spotted near the Malacañang area. SPO2 Fernandez reported to the Homicide Section of the WPD that a murder suspect was seen in the vicinity of Malacañang. SPO2 Fernandez and Laila Cruz then proceeded to J. P. Laurel Street, where Laila Cruz pointed at the person she identified to be the one who killed her brother. SPO2 Fernandez, introducing himself as a police officer, approached Ubales. SPO2 Fernandez found out that Ubales was a former member of the Philippine National Police (PNP) Special Action Force. He apprised Ubales of his rights and invited him to go to the PNP Field Force for proper investigation. Ubales told SPO2 Fernandez that he would voluntarily join him to prove to him that he was not in hiding. Before going to the PNP Field Force, SPO2 Fernandez and Ubales went to the Philippine General Hospital in order to have Ubales undergo a medical examination. SPO2 Fernandez and Ubales proceeded to the PNP Malacañang Field Force to coordinate with them, since the latter made the initial investigation of the shooting incident. At the Malacañang Field Force, Ubales was brought to the Homicide Section for investigation and description. SPO2 Fernandez admitted during cross examination that the arrest of Ubales came before witness Galvan appeared and executed a sworn statement.

P/Chief Inspector Carlos G. Mendez, a forensic firearm examiner, testified that on 5 November 2001, he received a .38 caliber *paltik* revolver with three bullets and one empty shell from Desk Officer PO2 Lopez. He examined it by firing the same. The gun was marked as Exhibit "H". Laila Cruz then testified that said gun was the same one she saw Mark place on the dining table the night before her brother was killed.

The prosecution and the defense stipulated that the cause of death of Mark was a gunshot wound, frontal region, measuring 0.5 x 0.4 cm, 3 cm right of the anterior midline, with a uniform collar measuring 0.2 and an area of tattooing measuring 6x5 cm, directed posteriorward, downward and medialward, fracturing the frontal bone, lacerating both cerebral hemisphere of the brain, with a deformed slug recovered at the cerebellum as stated in the Crime Laboratory report prepared and signed by

Dr. Romeo Salen, the medico-legal officer of OIC WPDCLO, documented as Medico-Legal Report No. W-737-2001.

After the prosecution rested its case, Ubales filed a Motion to File Demurrer to Evidence on the ground that the prosecution presented insufficient evidence to destroy the presumption of innocence of the accused. The trial court denied the Motion and accordingly set the hearing for presentation of the evidence of the defense.

Ubales testified that on 16 October 2001, at around 6 or 7 p.m., he went to the home of his friend Guido Almosera on Uli-Uli Street, where he saw Joseph Karunungan, Rico Sison, Eric Marquez and Henry Ponce.

The group was initially engaged in light conversation until Guido Almosera brought out some liquor while they were playing the guitar. Ubales stayed with the group until 10 p.m., when he left for Sta. Mesa to go to the house of a certain Alex to meet a man named Boy. He arrived at Alex's house at around 11 p.m., but left immediately when he learned that Boy was already asleep. Along the way, he saw Mark who had been having a drinking spree with other persons. He decided to join the group for a while before returning home.

At around 12 midnight, Ubales bade leave to go home. Mark went along with him to the place where he could get a ride home. They parted ways and Ubales got on a jeep which he rode to J.P. Laurel Street. He stopped by a 7-Eleven convenience store and bought something to eat before proceeding home.

On the way home, Ubales saw the group of Guido Almosera still having drinks. He decided to join them again until around 1 a.m. of 17 October 2001.

Ubales testified that although he is a former policeman, he no longer had a gun and that his sidearm is in the custody of the WPD. He stated further that he was arrested without a warrant.

The defense also presented the testimonies of Guido Almosera and Henry Norman Ponce. Both witnesses essentially corroborated the testimony of Ubales that he was with their group from 7

p.m. to 10 p.m. on 16 October 2001 and then from around 12:30 a.m. to 2 a.m. of 17 October 2001.

Ubales' sister, Irene Riparip, testified that her brother was at their home until around 7:00 p.m. on 16 October 2001, and he returned around 1 a.m. in the morning of 17 October 2001. She stated that Ubales did not leave the house after he returned because she stayed awake until 4 a.m.

On 20 July 2004, the Regional Trial Court rendered its Decision finding Angel Ubales guilty of the crime of homicide, as follows:

> WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt, judgment is hereby rendered CONVICTING the accused as principal in the crime of homicide and he is sentenced to suffer the indeterminate penalty of ten (10) years of *Prision Mayor* as minimum, to fourteen (14) years, eight (8) months and one (1) day medium of *Reclusion Temporal*, as maximum.
>
> The accused is also ordered to pay the heirs of the offended party the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱8,000.00 as actual damages.[3]

On 28 July 2004, the trial court issued an Order giving provisional liberty to Ubales provided the bonding company agrees to the extension of the bond. On 30 July 2004, the bonding company manifested its assent to continue its undertaking as bondsman for Ubales during the pendency of his appeal. Ubales appealed to the Court of Appeals. The case was docketed thereon as CA-G.R. CR No. 28813. On 30 November 2006, the Court of Appeals rendered its Decision affirming with modification the Decision of the Regional Trial Court, as follows:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court of Manila, Branch 33 in Criminal Case No. 01-196713 finding the accused-appellant Angel Ubales *y* Velez guilty of the crime of Homicide is AFFIRMED with MODIFICATION. The heirs of the victim Mark Tanglaw Santos are further awarded the amount of ₱25,000.00 as temperate damages.[4]

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[3] *Id.* at 45.

[4] *Id.* at 39.

Hence, this Petition, where Ubales presents the following issues for our consideration:

I

WHETHER OR NOT THE EVIDENCE FOR THE PROSECUTION PROVES THAT PETITIONER COMMITTED THE CRIME CHARGED BEYOND REASONABLE DOUBT.

II

WHETHER OR NOT THE ADDITIONAL AWARD OF TWENTY-FIVE THOUSAND PESOS (PHP25,000.00) AS TEMPERATE DAMAGES IS IN ACCORD WITH LAW AND THE RELEVANT DECISIONS OF THE HONORABLE SUPREME COURT.[5]

Petitioner Ubales claims that the prosecution has failed to prove his guilt beyond reasonable doubt, and the Court of Appeals had erred in giving credence to Galvan's testimony which allegedly defies common experience.

After a meticulous review of the records of the case at bar, we are constrained to agree with petitioner Ubales.

Petitioner Ubales was arrested on 25 October 2001, eight days after Mark's body was found. Ubales' arrest was made by SPO2 Rosales Fernandez at the insistence of Laila Cruz, who approached SPO2 Fernandez for assistance in apprehending Ubales. Up to the time of this arrest, the only piece of evidence which remotely links Ubales to the killing of Mark Santos is the recovery of a gun resembling a gun allegedly seen by Laila Cruz in his (Ubales') possession the night Mark was killed. This gun found several meters away from where Mark's body was found but was never identified as the gun where the bullet that killed Mark came from. All that the forensic firearm examiner testified to about this gun was that this is a .38 caliber *paltik* revolver with three bullets and one empty shell. The slug found in the head of Mark was never subjected to a ballistic examination, either.

It was at this point, when Angel Ubales had already been arrested despite the lack of evidence clearly linking him to the

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[5] *Id.* at 96.

crime, that Mark Santos' best friend, *balut* vendor Eduardo Galvan, appeared and executed a sworn statement that he was an eyewitness to the killing of Mark Santos. He proceeded to identify Angel Ubales without the benefit of a police line-up. Thereafter, he became the star witness in the prosecution of Angel Ubales.

In order to illuminate the analysis of Eduardo Galvan's testimony against Angel Ubales, we reproduce its relevant portions as follows:

Q: On October 17, 2001 **at about 3:00 in the morning**, did you sell your *balut*?
A: Yes, sir.

Q: At that time in what place were you?
A: Near Malacañang.

Q: What is the name of the street?
A: I forgot the name of the street.

ATTY. MORALES:
Q: Can't you recall the name of the street?

WITNESS:
A: Yes, sir.

Q: You said the street near Malacañang?
A: Yes, sir.

Q: Now while selling *balut* near Malacañang, have you witnessed an incident?
A: Yes, sir.

Q: What is that incident?
A: A quarrel.

Q: Who was quarrelling at that time?
A: Angel.

Q: And who?
A: Mark.

Q: What is the surname of Mark?
A: I forgot the surname but the name is Mark.

Q: How about Angel, what is the surname of Angel?
A: I cannot recall the surname.

Q: If Angel is inside the courtroom will you please go down and approach him and point to him?
A: (witness tap shoulder of a person who when asked his name answered Angel Ubales)

Q: Now you said there was a quarrel between Angel and Mark. **Where were you when you saw them quarreling, how far were you from them?**
A: **About one (1) meter more or less.**

Q: **How long did they quarrel?**
A: **About three (3) minutes.**

Q: After three (3) minutes what happened?
A: Angel suddenly drew something.

Q: What is that something that Angel drew?
A: Gun, sir, a shining gun.

ATTY. GARENA:
May we put on record that witness is demonstrating his hand pulling a gun pointing upward.

ATTY. MORALES:
Q: From where did he pull the gun?

WITNESS:
A: From his right waist and shot.

Q: After Angel pulled out a gun what did he do?

COURT:
He said he fired.

ATTY. MORALES:
What did he do with the gun when he pulled it out from his waist?

A: Shot and hit the victim.

Q: Whom he shot?
A: Mark.

Q: What part of the body was hit by the bullet?
A: Forehead.

Q: How many times was Mark shot by Ubales?
A: Only once.

Q: What happened to Mark after he was shot?
A: He fell to the ground.

ATTY. MORALES:
Q: **How far were you from these two (2) people Angel and Mark when Angel shot Mark?**

WITNESS:
A: **Only one (1) meter away**, I was near the flower box.

Q: You said that it was 3:00 o'clock in the morning when the incident happened?
A: Yes, sir.

Q: **And what is the condition of the place, what (sic) it dark or bright?**
A: **It was lighted.**

Q: Why (*sic*) is the place?
A: There was a light there.

Q: What kind of light was there?
A: There is an electric bulb.

Q: **How far were these two people referring to Mark and Angel Ubales when Angel Ubales shot Mark?**
A: **About one (1) meter away.**

COURT:
Q: Facing each other?

WITNESS:
A: Yes, Your Honor.

ATTY. MORALES:
Q: How about the light, how far is the light from Mark Ubales?
A: About one (1) arm length.

Q: **You said that after Ubales shot Mark he fell down, what happened to Ubales?**
A: **He ran away**.[6] (Emphasis supplied.)

In the assessment of the testimonies of witnesses, this Court is guided by the rule that for evidence to be believed, it must not only proceed from the mouth of a credible witness, but

[6] TSN, 22 January 2002, pp. 4-9.

must be credible in itself such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of juridical cognizance.[7]

Since the alleged eyewitness was the best friend and acquaintance of the victim since childhood, Galvan's testimony pointing to the accused as the perpetrator must be subjected to a rigid test which should demonstrate beyond cavil his truthfulness, honesty and rectitude as actual eyewitness to the perpetration of the criminal act.[8] Galvan's account is nowhere probable under the circumstances. As argued by the defense, there can be only two ways by which Galvan could have witnessed the altercation based on his testimony that he saw the whole thing within one meter from him. First, Galvan walked towards the protagonists and stopped within one meter from them during their three minutes of altercation. Second, Galvan was already at the place where he saw the protagonists, who walked towards him, and stopped within one meter from him to engage in their quarrel.

Upon further inquiry from Judge Romulo Lopez, the judge who had heard the testimony of Galvan, but not the one who penned the RTC Decision, we learned from Galvan that it was the first of the two options: he was walking from the checkpoint at Malacañang towards Legarda Street before the incident.

At the onset, we can easily see that Galvan's version of the facts raises very serious questions. Why would Eduardo Galvan, a 65-year old man, stop one meter away from two quarreling men at the very dangerous hour of 3 a.m. and stay there to watch for three minutes as if what he was witnessing is a movie scene? How come neither Angel Ubales, nor Galvan's best friend, Mark, acknowledge Galvan's presence for the entire three minutes that they were all barely one meter from each other, and in a well-illuminated place at that? After Angel Ubales ran away

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[7] *People v. Mala*, 458 Phil. 180, 193 (2003).

[8] *People v. Delmendo*, 196 Phil. 121, 140 (1981).

following his shooting of Mark, why did Galvan simply leave his bloodied best friend to die on the pavement? We should take note that Eduardo Galvan could not claim to be afraid at this point, as he had already seen Angel Ubales flee.

Furthermore, since it took an hour after the killing before the presence of the dead body of Mark Santos was reported to the police, it can fairly be assumed that if Galvan's version of the facts were true, there were no other people at the scene of the crime. Why was Galvan selling *balut* at a place with no pedestrian traffic at 3 a.m.?

In reading Eduardo Galvan's testimony, it is hard to ignore how he seemed not to remember a lot of things about the places involved in his testimony:

COURT:

Q: How far is the place of the incident from the house of Mark?
A: **I cannot estimate how far is the place of the incident and the house of Mark.**

Q: When you sell ballot (sic), what time do you start?
A: From 8:00 o'clock in the evening up to 3:00 o'clock in the morning.

Q: How do you conduct your vending of *balot*?
A: I sell.

Q: Where do you get your *balot*?
A: It was only delivered to me.

Q: Where?
A: In the house of my friend.

Q: Where is that house of your friend located?
A: Palawan St.

Q: Where is that Palawan St.
A: Balik-Balik.

Q: From Palawan St. to Balic-balic, you start selling from 8:00 o'clock in the evening, how many *balot* have you sold?
A: About thirty (30) pieces.

Q: From your house how far was that place of the incident?
A: **I cannot estimate.**

ATTY. GARENA:
How many blocks from your house?

A: **I cannot estimate, I just walk and walk.**

Q: On October 17, 2001 when was the first time on October 17, 2001 you saw Mark the victim?
A: In the evening.

COURT
What time?

A: About 3:00 o'clock in the morning.

ATTY. GARENA:
That was the first time you saw Mark?

A: 3:00 o'clock in the morning.

Q: From where did you get the *balot* that night?
A: I do not know the owner of the *balot*, it was just delivered to me.

Q: From your friend?
A: Yes, sir.

Q: What is the name of your friend?
A: **I cannot remember, sir.**

COURT:
Do you remember the place where this friend of yours resides when you took the *balot* that night?

A: **I cannot remember.**

Q: How many *balot*?
A: 40 pieces of *balot*.

Q: And you started selling from 8:00 o'clock in the evening to 3:00 o'clock in the morning?
A: Yes, your Honor.

Q: How many pieces have you sold when the incident occurred?
A: About 15 pieces.

Q: Describe the vicinity of the place where you took the *balot*?
A: **I cannot remember.**

Q: Prior to that night when you took 40 pieces of *balot*, you have been frequenting the place because you used to get your *balot* there?
A: The *balot* was delivered to me.

Q: By your friend?
A: Yes, your Honor.

Q: So you are changing your previous statement that you took the *balot* from the place of your friend?
A: When I went to the place.

Q: Since when you started selling *balot* which you get from that place?
A: About one year.

Q: Now Mr. Witness, you said you know Mark the victim since childhood, is that correct?
A: Yes, sir.

Q: How about the parents of Mark, do you know them?
A: Yes, sir.

Q: **How about the sisters and brothers, do you know them?**
A: **Yes, sir.**

Q: What is the name of Mark's father?
A: I don't know but I know his face.

Q: How about the mother?
A: Also I know her by face.

Q: **How many brothers has this Mark?**
A: **I do not know Your Honor.**

Q: You also do not know if he has sister?
A: He has sister how many I do not know Your Honor.

Q: When you know Mark since childhood, do you know if he is attending school?
A: Yes, Your Honor.

Q: Where?
A: **I do not know the school.**

Q: You also do not know what he finished?
A: **I do not know.**

Q: Mr. Witness, on October 17, 2001 at about 3:30 in the morning prior to that time where have you been?
A: I came from Legarda.

Q: Did you pass by Mendiola?
A: Yes, sir.

Q: In Mendiola that is the time you are vending *balot*?
A: Yes, sir.

Q: You usually shout *balot*?
A: Yes, sir.

Q: That is from Mendiola to Malacañang?
A: Yes, sir.

Q: What time you were in Mendiola at that time?
A: **I cannot tell the time I was just walking.**

Q: Were there still so many people in Mendiola at that time?

COURT
He do not know the exact place.

ATTY. GERANA:
That is why I am asking leading question to the witness Your Honor.

COURT:
Do you know the gate of Malacañang?

A: Yes, Your Honor.

Q: What gate is nearer to the place where Mark was shot?
A: **I cannot remember the gate.**

Q: There are schools along Mendiola proceeding towards gate 1 or gate (sic). Which school is near to the place where Mark was shot?
A: **I cannot remember because it was night time.**

Q: But you used to sell *balot* along Mendiola going to the gate of Malacañang?
A: Yes, Your Honor.

Q: So you are familiar with the schools along Mendiola?
A: **I do not know the schools.**

ATTY. GERENA:
Do you know St. Jude Church?

A: **No, sir.**

Q: **You also do not know the hospital in front or opposite St. Jude church?**
A: **No, sir.**

Q: Facing Malacañang, do you know the first street by the right side facing Malacañang?
A: Gate 1.

Q: **I am asking you facing the gate of Malacañang, do you know the first street in the right when you are standing at Mendiola?**
A: **No, sir**.[9]

The original judge himself, Judge Romulo Lopez, does not seem impressed with the testimony of Eduardo Galvan. Judge Romulo Lopez asked several clarificatory questions in order to test Galvan's credibility, and Galvan failed the test miserably. Eduardo Galvan repeatedly changed his answer on whether he told anyone about the incident before he executed his statement with the police station:

COURT:

Q: Under what circumstance were you able or you were make to execute your statement?

A: I went to the police station myself.

Q: What what (*sic*) reason do you have when you voluntarily went to the police station?

A: Because I was bothered by my conscience.

Q: That was the first time you narrated?

A: Yes, Your Honor.

Q: So you are impressing the Court that from the time you saw Mark due to the shooting fall to the ground you did not relay the story you saw to any person?

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[9] TSN, 22 January 2002, pp. 14-22.

A: None, Your Honor.

Q: Despite the fact that you were neighbor of Mark and his family you did not relay the incident to Mark's parents?

A: On the following day I narrated it to them the incident.

Q: The following day you were not brought by Mark's parents to the police station to give your statement?

A: No, Your Honor.

Q: There was a wake following that in the residence of Mark?

A: No, Your Honor.

Q: Where was the wake held?

A: The wake was held at the Arlington.

Q: Did you attend the wake?

A: Yes, Your Honor.

Q: Did you talk to a member of Mark's family in the wake?

A: No, Your Honor.[10]

Upon reading Galvan's testimony, we do not find the same sufficient to prove Ubales' guilt beyond any reasonable doubt. *While the correctness of a Decision is not impaired solely by the fact that the writer took over from a colleague who had earlier presided at trial, it is the bounden duty of appellate courts to even more closely examine the testimonies of the witnesses whose deportment the writer was not able to observe.*

The prosecution seeks to establish Ubales' motive in killing Mark by the alleged altercation between the two during their drinking spree. However, as testified by Laila Cruz herself, the argument was soon apparently resolved, with Ubales patting the shoulders of Mark Santos.

Furthermore, in both versions of the facts, Mark had been gracious enough to accompany Ubales after their carousal, clearly showing that whatever misunderstanding they had during their

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

drinking spree was already resolved. If Galvan's version of the facts is to be believed, Ubales and Mark had even been together for a several hours more before Mark was killed. We have ruled that though the general rule is that motive is not essential to a conviction especially where the identity of the assailant is duly established by other competent evidence or is not disputed, the absence of such motive is important in ascertaining the truth as between two antagonistic theories or versions of the killing.[11] Proof as to motive is essential when the evidence on the commission of the crime is purely circumstantial or inconclusive.[12] Verily, the dominating rule is that, with respect to the credibility of witnesses, this Court has always accorded the highest degree of respect to the findings of the trial court, unless there is proof of misappreciation of evidence — which is precisely the situation in the case at bar.

We also take note of petitioner Ubales' stance when he was confronted by Laila Cruz and SPO2 Fernandez. Ubales told SPO2 Fernandez that he would voluntarily join him to prove to him that he was not in hiding. Ubales then cooperated fully with SPO2 Fernandez, allowing himself to undergo a medical examination, which apparently yielded nothing as the findings thereof was not presented as evidence, and going with the SPO2 Fernandez to the PNP Malacañang Field Force. Flight evidences guilt and guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.[13] In all, we find it hard to lend credence to the testimony of the lone alleged eyewitness.

We have said that it is better to acquit ten guilty individuals than to convict one innocent person.[14] Every circumstance against guilt and in favor of innocence must be considered.[15] Where

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[11] *People v. Boholst- Caballero*, 158 Phil. 827, 840 (1974).

[12] *People v. Aniel*, 185 Phil. 122, 132-133 (1980).

[13] *People v. Acosta, Sr.*, 444 Phil. 385, 415 (2003), citing *People v. Rabanal*, 402 Phil. 709, 717 (2001); *People v. Gregorio*, 325 Phil. 689, 706 (1996).

[14] *Reyes v. Court of Appeals*, 335 Phil. 206, 217 (1997).

[15] *People v. Clores*, 210 Phil. 51, 59 (1983).

the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be given the benefit of doubt and should be acquitted.[16] In the instant case, while it is possible that the accused has committed the crime, there is also the possibility, based on the evidence presented, that he has not. He should be deemed to have not for failure to meet the test of moral certainty. Finally, an accused should not be convicted by reason of the weakness of his alibi. It is fundamental that the prosecution must prove its case beyond reasonable doubt and must not rely on the weakness of the evidence of the defense.[17] Since there are very serious doubts in the testimony of the lone eyewitness to the killing of Mark Santos, we have no choice but to acquit petitioner Angel Ubales on the ground of reasonable doubt.

Having ruled that the prosecution has failed to prove the guilt of petitioner beyond a reasonable doubt, the second issue, which relates to the temperate damages which petitioner would have been liable for had he been found guilty, is now mooted.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 28813 dated 30 November 2006 is *REVERSED* and *SET ASIDE*. Petitioner Angel Ubales *y* Velez is hereby *ACQUITTED* of the crime of homicide on account of reasonable doubt.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Brion,*[***] *JJ.,* concur.

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[16] *People v. Mijares*, 358 Phil. 154, 166 (1998).

[17] *People v. Tabayoyong*, 192 Phil. 234, 256-257 (1981).

[*] Per Special Order No. 531, dated 20 October 2008, signed by Acting Chief Justice Leonardo A. Quisumbing, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on leave.

[**] Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

[***] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 22 October 2008.

SECOND DIVISION

[G.R. No. 177222. October 29, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RANILO DE LA CRUZ *y* LIZING,** *appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; AN ACCUSED SHALL BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVEN BEYOND REASONABLE DOUBT. — At the outset, it is well to restate the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case the presumption prevails and the accused should necessarily be acquitted.

2. CRIMINAL LAW; SPECIAL LAWS; 2002 DANGEROUS DRUGS ACT (R.A. No. 9165); GUIDELINES REGARDING THE CUSTODY AND CONTROL OF SETTLED DANGEROUS DRUGS. — Section 21 of R.A. No. 9165 states that: (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; The IRR of the same provision adds a proviso, to wit: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-

compliance with these requirements under justifiable grounds, as long as the integrity and 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.; CASE AT BAR. — In the case at bar, the Court finds that the arresting officers failed to strictly comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs despite its mandatory terms. While there was testimony regarding the marking of the seized items at the police station, there was no mention whether the same had been done in the presence of appellant or his representatives. There was likewise no mention that any representative from the media, DOJ or any elected official had been present during the inventory or that any of these people had been required to sign the copies of the inventory. Neither does it appear on record that the team photographed the contraband in accordance with law.

4. ID.; ID.; ID.; ID.; *PROVISO* OF THE IRR OF SECTION 21(a) OF R.A. No. 9165; CASE AT BAR. — Now, the prosecution cannot seek refuge in the *proviso* of the IRR in the absence of proof of entitlement to such leniency. The prosecution rationalizes its oversight by merely stating that the integrity and evidentiary value of the seized items were properly preserved in accordance with law. The allegation hardly sways the Court save when it is accompanied by proof. According to the proviso of the IRR of Section 21(a) of R.A. No. 9165, non-compliance with the procedure shall not render void and invalid the seizure of and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Clearly, there must be proof that these two (2) requirements were met before any such non-compliance may be said to fall within the scope of the proviso. 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 had all along been preserved.

5. ID.; ID.; ID.; IDENTITY AND INTEGRITY OF SEIZED DRUGS; COMPROMISED BY ARRESTING OFFICERS' NON-

COMPLIANCE WITH PROCEDURE IN SECTION 21(a), RA NO. 9165. — Failing to prove entitlement to the application of the proviso, the arresting officers' non-compliance with the procedure laid down by R.A. No. 9165 is not excused. This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution failed to present the required quantum of evidence, appellant's acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

On appeal is the Decision[1] dated 30 November 2006 of the Court of Appeals in C.A.-G.R. CR No. 01266 affirming in *toto* the judgment[2] dated 14 June 2004 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 211, finding appellant Ranilo Dela Cruz *y* Lizing guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) and sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of ₱500,000.00.[3]

On 13 September 2002, Dela Cruz was charged with the violation of the aforesaid offense in an Information[4] that reads:

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[1] *Rollo*, pp. 4-16. Penned by Associate Justice Monina Arevalo-Zenarosa, and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin.

[2] CA *rollo*, pp. 20-28. Presided by Judge Paulita B. Acosta-Villarante.

[3] *Id.* at 27.

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

That on or about the 12th day of September 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously deliver, distribute, transport or sell to poseur-buyer PO2 Nick Resuello[,] one (1) heat-sealed transparent plastic sachet containing 0.03 gram each of white crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, commonly known as "*shabu*," a dangerous drug, for the amount of ₱100.00 with Serial No. XY588120, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.[5]

On arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued with the prosecution presenting as witnesses arresting officers PO2 Braulio Peregrino, PO2 Nick Resuello, PO2 Marcelino Boyles, PO2 Allan Drilon, investigator-on-case PO3 Virgilio Bismonte and Forensic Chemist Joseph Perdido.

Prosecution evidence shows that on 12 September 2002, the Office of the Station Drugs Enforcement Unit (SDEU), Mandaluyong City received information that appellant, *alias* "*Boy Tigre*," of No. 73, Dela Cruz Street, Barangay Old Zaniga, Mandaluyong City was engaging in the trade of illegal drugs. A team composed of Peregrino, Boyles, Drilon and Resuello was dispatched to conduct a buy-bust operation in the area at around 2:00 p.m. of the same day. Peregrino, Boyles, and Drilon positioned themselves at a nearby area while Resuello, the designated poseur-buyer, approached appellant described as a long-haired, medium built, not-so-tall male, sporting a moustache and frequently seen wearing short pants.[6] At the time, appellant was standing outside of their gate and kept on glancing from side to side.[7] Resuello then told appellant that he wanted to buy *shabu*. Dela Cruz looked surprised prompting Resuello to repeat what he had said and handed him the ₱100 bill with Serial No.

[5] *Id.* at 7.

[6] TSN, 2 June 2003, p. 10.

[7] TSN, 10 March 2003, pp. 2-5.

XY 588120. Appellant, in turn, handed him a plastic sachet containing the white crystalline substance. At which point, Resuello executed the pre-arranged signal and Peregrino immediately rushed to the scene.[8]

Peregrino, identifying himself as a policeman, held appellant and informed him of his constitutional rights. Peregrino then recovered the buy-bust money from appellant. Subsequently, appellant was brought to SDECU for investigation. Thereat, Peregrino placed his initials (BP) on the plastic sachet containing the white crystalline substance before sending it to the Eastern Police District Crime Laboratory for chemical examination. The sachet was later tested positive for methamphetamine hydrochloride, a dangerous drug. Subsequently, Peregrino and Resuello accomplished the booking and information sheets regarding the incident. Peregrino also executed an affidavit on the matter.[9] Appellant was later identified as Ranilo Dela Cruz *y* Lising.[10]

On cross-examination, Peregrino and Resuello admitted that the buy-bust money had neither been dusted with fluorescent powder nor marked. They only made a photocopy of it prior to the operation for purposes of identification.[11] Peregrino also testified that appellant had not been tested for the presence of fluorescent powder; neither was a drug examination conducted on him. After the arrest, Peregrino narrated that his office made a report on the matter which was forwarded to the Philippine Drug Enforcement Agency (PDEA).[12] Boyles testified likewise on cross-examination that at the time of the arrest, they had no coordination with PDEA.[13] Drilon, on the other hand, testified that he had not actually seen the transaction.[14]

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[8] TSN, 2 June 2003, pp. 5-6.

[9] TSN, 10 March 2003, pp. 5-8; 2 June 2003, p. 7.

[10] TSN, 2 June 2003, p. 9.

[11] TSN, 2 June 2003, p. 11; 31 March 2003, p.2.

[12] TSN, 31 March 2003, pp. 2-3; 2 June 2003, p. 3.

[13] TSN, 4 August 2003, p. 8.

[14] TSN, 27 August 2003, p. 1.

Forensic Chemist Perdido testified that the plastic sachet was found to contain methamphetamine hydrochloride. He, however, admitted that he examined the specimen and had made the markings on the same without the presence of appellant.[15]

For the defense, appellant testified that on 12 September 2002, at around 1:00 to 2:00 p.m., he was in his house watching television with his wife when he heard a knock at the door. Outside, he came upon two men looking for "*Boy Tigre*." After admitting that it was he they were looking for, he was told that the *barangay* captain needed him. He went with the two men to see the *barangay* captain. Thereat, the *barangay* captain asked whether he knew of anyone engaged in large-scale drug pushing. Appellant replied in the negative and in response, the *barangay* captain stated that there was nothing more he (the *barangay* captain) can do. Appellant was then told to go to the City Hall. At first, his wife accompanied him there but he later asked her to go home and raise the money Bismonte had allegedly demanded from him in exchange for his freedom. When appellant's wife failed to return as she had given birth, a case for violation of Section 5, Article II of R.A. No. 9165 was filed against him.[16] Appellant added that he used to be involved in "video-karera" and surmised that this involvement could have provoked the *barangay* captain's wrath.[17]

Appellant's wife, Jocelyn Dela Cruz, corroborated appellant's testimony. She further stated that after appellant had identified himself as "*Boy Tigre*," the two men held on to him and asked him to go with them to the *barangay* captain. There, the *barangay* captain asked appellant if he knew a certain "Amon" of *Pitong Gatang*. When appellant replied that he did not, he was then brought to the SDECU where Bismonte allegedly demanded ₱100,000.00 from them or else a case without bail will be filed against appellant.[18]

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[15] TSN, 27 January 2003, pp. 4-5.

[16] TSN, 13 October 2003, pp. 3-6; 3 November 2003, pp. 4-6.

[17] TSN, 3 November 2003, p. 6.

[18] TSN, 4 February 2004, pp. 3-9.

Finding that the prosecution had proven appellant's guilt beyond reasonable doubt, the RTC rendered judgment against him, sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of ₱500,000.00. On appeal to the Court of Appeals, the challenged decision was affirmed *in toto* by the appellate court, after it ruled that the trial court did not commit any reversible error in finding appellant guilty of the offense charged.

Before the Court, appellant reiterates his contention that the apprehending police officers' failure to comply with Sections 21[19]

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[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:

(1) The apprehending officer/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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

and 86[20] of R.A. No. 9165 and that failure casts doubt on the validity of his arrest and the admissibility of the evidence allegedly seized from him.[21] Through his Manifestation (In Lieu of Supplemental Brief) dated 4 September 2007, appellant stated that he had exhaustively argued all the relevant issues in his Brief filed before the Court of Appeals and thus, he is adopting it as Supplemental Brief.[22]

The Office of the Solicitor General (OSG) manifested that it was dispensing with the admission of a supplemental brief.[23]

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[20] SEC. 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

[21] CA *rollo*, p. 56.

[22] *Rollo*, pp. 21-22.

[23] *Id*. at 24.

Earlier, in its Appellee's Brief, the OSG maintained that despite the non-compliance with the requirements of R.A. No. 9165, the seized drugs are admissible in evidence because their integrity and evidentiary value were properly preserved in accordance with the Implementing Rules and Regulations of R.A. No. 9165.[24]

At the outset, it is well to restate the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case the

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[24] Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 states that:

> 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:
>
> (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**: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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:** (Emphasis supplied).

presumption prevails and the accused should necessarily be acquitted.[25]

In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[26] The dangerous drug is the very *corpus delicti* of the offense.[27]

Section 21 of R.A. No. 9165 states that:

(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;

The IRR of the same provision adds a proviso, to wit:

Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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;

In the case at bar, the Court finds that the arresting officers failed to strictly comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs despite its mandatory terms. While there was testimony regarding the marking of the seized items at the police station, there was no mention whether the same had been done in the presence of

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[25] *People v. Uy*, 392 Phil. 773, 782-783 (2000).

[26] *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[27] *People v. Simbahon*, 449 Phil. 74, 81 (2003).

appellant or his representatives. There was likewise no mention that any representative from the media, DOJ or any elected official had been present during the inventory or that any of these people had been required to sign the copies of the inventory. Neither does it appear on record that the team photographed the contraband in accordance with law. Peregrino testified as follows:

Q While you were at the office, what did you do with the physical evidence, subject of the buy-bust operation?
A When we were at the office[,] we marked the subject physical evidence and requested for physical examination[,] Ma'am.

ACP Indunan:

What were the markings placed on the physical evidence?
A What we put is initial "BP"

Q What does this BP means [*sic*]?
A My initial Ma'am, Braulio Perigrino [*sic*].[28]

Resuello likewise testified in this wise:

ACP Indunan:

Q Before you brought this item to the crime laboratory[,] what other markings you placed on the sachet?
A We put a marking BP, Ma'am.

Q That BP stands for what[,] Mr. witness?
A Braulio Perigrino[,] Ma'am.[29]

Following the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused,[30] the apprehending team's omission to observe the procedure outlined by R.A. 9165 in the custody and disposition of the seized drugs significantly impairs the prosecution's case.

Now, the prosecution cannot seek refuge in the proviso of the IRR in the absence of proof of entitlement to such leniency.

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[28] TSN, 10 March 2003, pp. 6-7.

[29] TSN, 2 June 2003, p. 7.

[30] *People v. Soriano*, 455 Phil. 77 (2003).

The prosecution rationalizes its oversight by merely stating that the integrity and evidentiary value of the seized items were properly preserved in accordance with law. The allegation hardly sways the Court save when it is accompanied by proof. According to the proviso of the IRR of Section 21(a) of R.A. No. 9165, non-compliance with the procedure shall not render void and invalid the seizure of and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Clearly, there must be proof that these two (2) requirements were met before any such non-compliance may be said to fall within the scope of the proviso. 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 had all along been preserved.[31]

Failing to prove entitlement to the application of the proviso, the arresting officers' non-compliance with the procedure laid down by R.A No. 9165 is not excused. This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant[32] as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.[33] Considering that the prosecution failed to present the required quantum of evidence, appellant's acquittal is in order.

It is well to recall that in several cases that came before us, we have repeatedly emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. We have over and over declared that the deviation

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[31] See Dissenting Opinion of Justice Arturo D. Brion in *People v. Agulay*, G.R. No. 181747, 26 September 2008.

[32] *People v. Raquel*, 333 Phil. 72 (1996).

[33] *People v. Simbahon*, 449 Phil. 74, 83 (2003).

from the standard procedure dismally compromises the integrity of the evidence.[34]

Anent the argument that the buy-bust operation was conducted without the assistance or consent of PDEA, in violation of Section 86 of R.A. No. 9165, it must be pointed out that the second paragraph of the same provision states that the transfer, absorption and integration of the different offices into PDEA shall take effect within eighteen (18) months from the effectivity of the law which was on 4 July 2002.[35] In view of the fact that the buy-bust operation was conducted on 12 September 2002, it is excusable that the same was not done in coordination with PDEA.

All told, the totality of the evidence presented in the instant case does not support appellant's conviction for violation of Section 5, Article II, R.A. No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense. Following the constitutional mandate, when the guilt of the appellant has not been proven with moral certainty, as in this case, the presumption of innocence prevails and his exoneration should be granted as a matter of right.

WHEREFORE, the Decision dated 14 June 2004 of the Regional Trial Court of Mandaluyong City, Branch 211 in Criminal Case No. MC02-5912-D is *REVERSED* and *SET ASIDE*. Appellant RANILO DELA CRUZ *y* LIZING is *ACQUITTED* of the crime charged on the ground of reasonable doubt and ordered immediately *RELEASED* from custody, unless he is being held for some other lawful case.

The Director of the Bureau of Corrections is *ORDERED* to implement this Decision forthwith and to *INFORM* this Court,

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[34] *People v. Orteza*, G.R. No. 173501, 31 July 2007, 528 SCRA 750; *People v. Nazareno*, G.R. No. 174771, 11 September 2007, 532 SCRA 630; *People v. Santos, Jr.*, G.R. No. 175593, 17 October 2007, 536 SCRA 489.

[35] R.A. No. 9165 states in Section 102 thereof that it shall take effect fifteen (15) days upon its publication in at least two (2) national newspapers of general circulation. Said law was published in both The Manila Times and Manila Standard on 19 June 2002.

within five (5) days from receipt hereof, of the date appellant was actually released from confinement.

Costs *de oficio.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182192. October 29, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AGRIPINO GUEVARRA *y* MULINGTAPANG *alias* "BOY DUNGGOL,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WELL-SETTLED PRINCIPLES. — In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.

2. ID.; ID.; DENIAL; MUST BE PROVED BY THE ACCUSED WITH CLEAR AND CONVINCING EVIDENCE. — Denial is inherently a weak defense as it is negative and self-serving.

Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. Denial and alibi must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CONSTRUED. — 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 any defensive or retaliatory act which the victim might make. The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution.

4. ID.; SPECIAL AGGRAVATING CIRCUMSTANCES; USE OF UNLICENSED FIREARM; CASE AT BAR. — Pertinent provision of Presidential Decree No. 1866, as amended by Republic Act. No. 8294, states that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. Appellant's use of an unlicensed firearm in killing Inspector Barte was alleged in the information as a special aggravating circumstance. Such circumstance was also duly proven by the prosecution during the trial. The prosecution presented a certification from the PNP Firearms and Explosives Division which attests that appellant was not a licensed/ registered firearm holder.

5. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; WHEN APPRECIATED. — For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) that the offender had not been actually arrested; (2) that the offender surrendered himself to a person in authority; and (3) that the surrender was voluntary.

6. ID.; MURDER; DETERMINATION OF PENALTY TAKING INTO ACCOUNT ONE SPECIAL AGGRAVATING CIRCUMSTANCE AND ONE MITIGATING CIRCUMSTANCE; CASE AT BAR. — Article 248 of the Revised Penal Code states that murder is punishable by *reclusion perpetua* to death. Article 63 (4) of the same Code provides that if the penalty is composed of two indivisible penalties, as in this case, and both mitigating and aggravating circumstances attended the commission of the crime, the courts shall reasonably allow them to offset one another in consideration of their number and importance. As earlier determined, the mitigating circumstance of voluntary surrender and the aggravating circumstances of treachery and use of an unlicensed firearm were present in the instant case. Nonetheless, the aggravating circumstance of treachery in this case cannot be applied for offsetting because it was already considered as a qualifying circumstance. Thus, only the aggravating circumstance of use of an unlicensed firearm may be utilized in offsetting the mitigating circumstance of voluntary surrender. We stated earlier that the use of an unlicensed firearm in murder is a **special** aggravating circumstance and not merely a generic aggravating circumstance. As such, it cannot be offset by an ordinary mitigating circumstance such as voluntary surrender. Thus, the only modifying circumstance remaining in the present case is the special aggravating circumstance of use of an unlicensed firearm. Article 63(1) of the Code provides that if the penalty is composed of two indivisible penalties, as in this case, and there is present only one aggravating circumstance, the greater penalty shall be applied. Consequently, the penalty imposable on appellant is death.

7. ID.; ID.; ID.; WHILE PENALTY IMPOSED ON APPELLANT IS REDUCED DUE TO R.A. NO. 9346, HE IS NOT ELIGIBLE FOR PAROLE; CASE AT BAR. —However, with the effectivity of Republic Act No. 9346 entitled, "An Act

Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to appellant shall be *reclusion perpetua*. Said section reads: SECTION 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. Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides: SECTION 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.

8. ID.; ID; CIVIL LIABILITY; CIVIL INDEMNITY; AWARD NOT DEPENDENT ON ACTUAL IMPOSITION OF DEATH PENALTY BUT ON FACT THAT QUALIFYING CIRCUMSTANCES WARRANTING IMPOSITION OF DEATH ATTENDED THE COMMISSION OF THE OFFENSE. — In *People v. Quiachon*, we explained that even if the penalty of death is not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 is still proper as the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

9. ID.; ID.; ID.; LOSS OF EARNING CAPACITY; HOW COMPUTED; AMOUNT AWARDED IN CASE AT BAR. — The heirs of Inspector Barte should also be indemnified for loss of earning capacity pursuant to Article 2206 of the New Civil Code. Consistent with our previous decisions, the formula for the indemnification of loss of earning capacity is: Net Earning Capacity = Life Expectancy x [Gross Annual Income (GAI) - Living Expenses] = 2/3 (80 - age of deceased) x (GAI-50% of GAI). Inspector Barte's death certificate states that he was 46 years old at the time of his demise. The pay slip issued by the PNP, Camp Crame, Quezon City, to Inspector Barte for August 2002 shows that the latter was earning an

annual gross income of ₱371,784.00. Applying the above-stated formula, the indemnity for the loss of earning capacity of Inspector Barte is ₱4,213,551.00, computed as follows: Net Earning Capacity = 2/3 (34) x (₱371,784.00- ₱185,892.00) = 2/3 (34) x ₱185,892.00 = ₱4,213,551.00. Hence, the amount of ₱4,212,312.72 awarded to the heirs of Inspector Barte as indemnity for the latter's loss of earning capacity should be increased to ₱4,213,551.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02367, dated 16 October 2007,[1] affirming with modification the Decision, dated 4 July 2006, of the Batangas City Regional Trial Court (RTC), Branch IV, in Criminal Case No. 12486,[2] finding accused-appellant Agripino Guevarra *y* Mulingtapang, *alias* "Boy Dunggol," guilty of murder, and imposing upon him the penalty of *reclusion perpetua*.

The facts gathered from the records of the case are as follows:

On 30 August 2002, an Information[3] was filed with the RTC charging appellant with murder. The accusatory portion of the information reads:

That on or about August 24, 2002 at around 9:15 o'clock in the evening at Ebora Road, Brgy. Kumintang Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the

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[1] Penned by Associate Justice Mariflor P. Punzalan-Castillo with Associate Justices Marina L. Buzon and Rosmari D. Carandang, concurring; *rollo*, pp. 2-19.

[2] Penned by Judge Conrado R. Antona; CA *rollo*, pp. 38-44.

[3] Records, pp. 1-2.

above-named accused, while armed with a caliber .45 pistol, a deadly weapon, with intent to kill and with the qualifying circumstance of treachery, did then and there willfully, unlawfully and feloniously attack, assault and repeatedly shot with said firearm suddenly and without warning one P/Chief Inspector Marcos Barte y Paz while the latter was unarmed and completely defenseless, thereby hitting him on different parts of his body which directly caused the victim's death.

That the special aggravating circumstance of the use of an unlicensed firearm is attendant in the commission of the offense.

When arraigned on 12 November 2002, appellant, assisted by his counsel *de oficio*, pleaded "Not guilty" to the charge.[4] Trial on the merits thereafter followed.

The prosecution presented as witnesses Anacleto Gonzales (Anacleto), Maria Antonette Gonzales (Antonette), Senior Police Officer 1 Felixberto Cabungcal (SPO1 Cabungcal), SPO1 Florentino Buenafe (SPO1 Buenafe), Dr. Edwin Castillo (Dr. Castillo), Dr. Antonio S. Vertido (Dr. Vertido), and Marita Gonzales *Vda*. *de* Barte (Mrs. Barte). Their testimonies are summarized as follows:

Anacleto, cousin of herein deceased victim Police Chief Inspector Marcos P. Barte (Inspector Barte) of the Batangas City Police Station, testified that on 24 August 2002, at around 3:30 p.m., Inspector Barte, accompanied by a certain Roberto Godoy (Godoy) and Ronnie Valiente (Valiente), arrived at his house located at Barangay Kumintang Ibaba, Batangas City. He, Inspector Barte, Godoy, Valiente, and Anacleto's father-in-law, Nicasio Resurreccion (Nicasio), talked and drank gin inside the house. Subsequently, the group, with the exception of Godoy, left the house and went to a videoke bar owned by a certain Sergeant Emilio Vidal (Sgt. Vidal) located at Ebora Road, Barangay Kumintang Ibaba, Batangas City. They arrived at the videoke bar at about 8:30 p.m. He drank one bottle of beer while Inspector Barte consumed two bottles of beer. Thereafter, at about 9:15 p.m., the group went out of the videoke

[4] *Id.* at 18.

bar. He saw his wife, Antonette, outside the videoke bar. Antonette approached and talked to him. He also saw Godoy seated in the driver's seat of an owner-type jeep parked near the videoke bar, and a certain Imelda Shin (Imelda) sitting at the back portion of the jeep. Valiente boarded the jeep and sat beside Imelda. Inspector Barte also boarded the jeep and sat in the front passenger's seat beside Godoy. When Anacleto was about to board the jeep, appellant suddenly appeared and approached Inspector Barte. Appellant asked Inspector Barte if he was "Major Barte." Thereupon, he saw appellant shoot Inspector Barte several times with a short firearm. He was then one arm's length from Inspector Barte and one meter away from appellant. Inspector Barte slumped on his seat bloodied while Godoy shouted that he was also hit. Appellant immediately fled the scene.[5]

Subsequently, Anacleto drove the jeep and brought Inspector Barte to the Batangas Regional Hospital. Inspector Barte was pronounced dead on arrival. Godoy was also brought to the said hospital for treatment of his wounds. Later, the police arrived at the hospital and interviewed him about the incident. He executed a sworn statement regarding the incident.[6]

Antonette narrated that on 24 August 2002, at about 8:40 p.m., she, together with Godoy and Imelda, went to a videoke bar owned by Sgt. Vidal at Ebora Road, Barangay Kumintang Ibaba, Batangas City, to fetch her husband, Anacleto. She and Imelda boarded an owner-type jeep driven by Godoy in going to the videoke bar. Upon arriving thereat, she proceeded to the videoke bar, peeped in its window, and saw Anacleto, Inspector Barte, her father, and Valiente therein. She signaled to Anacleto that she would wait for them on the jeep outside the videoke bar. Afterwards, Anacleto, Inspector Barte, Nicasio, and Valiente went out of the videoke bar. Nicasio boarded a tricycle and proceeded home while Valiente and Inspector Barte boarded the jeep. Valiente sat beside Imelda at the backseat of the jeep

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[5] TSN, 3 February 2003, pp. 3-6.

[6] *Id.* at 6-11.

while Inspector Barte sat beside the driver's seat then occupied by Godoy. When Anacleto was about to board the jeep, she heard a gunshot. Upon turning her head towards the direction of the gunshot, she saw appellant shoot Inspector Barte with a short firearm. Thereafter, she heard Godoy shouting that Inspector Barte was shot and told her to call the police. She immediately proceeded to a nearby drug store where she used a telephone in contacting the police. She saw Anacleto driving the jeep with Inspector Barte on board. Later, she proceeded to the Batangas Regional Hospital where she saw the lifeless body of Inspector Barte in a stretcher. She also saw therein Godoy being treated for wounds.[7]

SPO2 Cabungcal, a member of the Batangas City Police Station, Intelligence Division, testified that he was on duty at the said station on the night of 24 August 2002. On that same night, the station received a report about a shooting incident at Ebora Road, Barangay Kumintang Ibaba, Batangas City. He and several police officers immediately proceeded to the crime scene. Upon arriving thereat, they searched the crime scene and recovered four caliber .45 empty shells, one live caliber .45 ammunition and one deformed caliber .45 slug. Thereafter, they went to the Batangas Regional Hospital where they were informed that Inspector Barte was already dead. He turned over to SPO1 Buenafe, the investigator of the case, the evidence they recovered from the crime scene.[8]

SPO1 Buenafe, a member of the Batangas City Police Station, Investigation Section, averred that he conducted an investigation in the instant case; that after the incident, he went to the Batangas Regional Hospital where he was informed that Inspector Barte was already dead and Godoy was injured; and that SPO1 Cabungcal turned over to him object evidence recovered from the crime scene.[9]

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[7] TSN, 3 June 2003, pp. 22-30.

[8] TSN, 1 April 2003, p. 10.

[9] TSN, 16 September 2006, pp. 3-10.

Dr. Castillo, a surgeon assigned at the Batangas Regional Hospital, recounted that he attended to Inspector Barte when the latter was brought to the hospital on the night of 24 August 2002. During the initial examination, he observed that Inspector Barte sustained gunshot wounds and had no blood pressure, cardiac and respiratory rate. He and some medical staff tried to resuscitate Inspector Barte but to no avail. The gunshot wounds were located on the left temporal area, left anterior chest, right nipple, and left arm of Inspector Barte. He considered the gunshot wounds in the left temporal area and left anterior chest of Inspector Barte fatal. He issued a medico-legal certificate pertaining to Inspector Barte and an anatomical chart showing the location of gunshot wounds sustained by Inspector Barte.[10] His findings, as stated in the medico-legal certificate of Inspector Barte, are as follows:

THIS IS TO CERTIFY that Marcos P. Barte, 46 years of age, male, Filipino of Soro-soro 2, Batangas City, at about 9:30 p.m., August 24, 2002 with the following injuries sustained by him:

Multiple gunshot wounds anterior chest left, Right nipple left temporal area, left arm

NOTE: DEAD ON ARRIVAL[11]

Dr. Vertido, Medico-Legal Officer of the National Bureau of Investigation (NBI), Southern Tagalog, Region 4, declared that he conducted an autopsy on the corpse of Inspector Barte; that Inspector Barte sustained three gunshot wounds; that the first gunshot wound was located on the left portion of the head which fractured the skull; that the second gunshot wound was situated on the right portion of the chest which perforated the heart and the upper lobe of the left lung exiting at the left side of the back; that the third wound was on the left portion of the chest which penetrated the upper lobe of the left lung and exited at the posterior side of the left arm; and that these wounds caused the death of Inspector Barte.[12] He issued a Certificate

[10] TSN, 3 June 2003, pp. 3-12.

[11] Folder of Exhibits, Exhibit "L".

[12] TSN, 16 September 2006, pp. 15-27.

of Post-Mortem Examination on Inspector Barte in support of his foregoing findings, *viz*:

POSTMORTEM FINDINGS

Pallor, lips and nailbed.
Contusion; anterior chest wall, midline, 2 x 3 cm.

GUNSHOT WOUNDS:

1. ENTRANCE 1.3 x 1.0 cm. ovaloid, edges inverted, with a contusion collar widest at its upper border, surrounded by an area of tattoing, 8 x 6 cms. at the left temple 6 cms. infront and 5 cms. above the left external auditory meatus, directed backwards, downwards and medially, involving the skin and underlying soft tissue, fracturing left temporal bone, lacerating corresponding lobe, fracturing and penetrating left midcranial fossa, into the soft tissue of the left posterior neck, 12 cms, below and 10 cm behind the left external auditory meatus where a semideformed slug was recovered.

2. ENTRANCE 1.3 x. 1.0 cm. ovaloid, edges inverted, with a contusion collar widest at its lower border located at the right anterior chest wall, 10 cms. from the anterior median line, 125 cms. above the right heel, directed, backward, upward and from right to left involving the skin and underlying soft tissue perforating the heart, and upper lobe of the left lung, then making an EXIT wound, 1.0 x 1.1. cm., ovaloid, edges everted, located at the back left side, (scapular area) 20 cm. from the posterior median line, 137 cm. above the left heel.

3. ENTRANCE 1.2 x 1.0 cm. ovaloid, edges inverted with a contusion collar widest at its lower border, located at the left anterior chest wall, 2 cm. from the anterior median line 131 cm. above the left heel, directed backward, upward and laterally, involving the skin and underlying soft tissues, perforating upper lobe of the left lung then making an EXIT wound, 1 x 1.1 cm. ovaloid, edges everted located at the left arm, posterior aspect, upper 3rd 28 cms. above the left elbow.

CAUSE OF DEATH: GUNSHOT WOUNDS, HEAD AND CHEST.[13]

Mrs. Barte, wife of Inspector Barte, testified on the civil aspect of the case. She presented a list of expenses incurred for the wake and burial of Inspector Barte which amounted to ₱183,425.00. She also submitted official receipts pertaining to

[13] Folder of Exhibits, Exh. "R".

the funeral expenses (₱46,250.00), burial lot (₱53,000.00), and interment fee (₱10,000.00). She claimed that at the time of Inspector Barte's death, the latter was receiving a monthly income of ₱30,982.00.[14]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) sworn statement of Mrs. Barte (Exhibit A);[15] (2) sworn statement of Anacleto (Exhibit B);[16] (3) sworn statement of Antonette (Exhibit C);[17] (4) sworn statement of SPO1 Buenafe (Exhibit D);[18] (5) death certificate of Inspector Barte (Exhibit E);[19] (6) certification from the PNP, Firearms and Explosives Division, Camp Crame, Quezon City, that appellant is not a licensed/registered firearm holder of any kind and caliber (Exhibit F);[20] (7) four empty bullet shells, one deformed slug and one live ammunition (Exhibit G);[21] (8) list of wake and burial expenses (Exhibit H);[22] (9) official receipt covering the funeral expenses (Exhibit I);[23] (10) official receipt for the burial lot (Exhibit J);[24] (11) anatomical chart showing the location of gunshot wounds sustained by Inspector Barte (Exhibit K);[25] (12) medico-legal certificate of Inspector Barte signed by Dr. Castillo (Exhibit L);[26] (13) pay slip of Inspector Barte for August 2002 (Exhibit M);[27] (14) list of expenses incurred

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[14] TSN, 3 June 2003, pp. 15-17.

[15] Records, p. 6.

[16] *Id.* at 7.

[17] *Id.* at 8.

[18] *Id.* at 9.

[19] Folder of Exhibits, Exh. "E".

[20] *Id.*, Exh. "F".

[21] Records, p. 109.

[22] Folder of Exhibits, Exh. "H".

[23] *Id.*, Exh. "I".

[24] *Id.*, Exh. "J".

[25] *Id.*, Exh. "K".

[26] *Id.*, Exh. "L".

[27] *Id.*, Exh. "M".

for the food served during the wake and burial of Inspector Barte (Exhibit N);[28] (15) request for autopsy of Inspector Barte signed by Mrs. Barte (Exhibit O);[29] (16) certificate of identification signed by Dr. Vertido (Exhibit P);[30] (17) certificate of post-mortem examination on Inspector Barte (Exhibit Q);[31] (18) autopsy report on Inspector Barte signed by Dr. Vertido (Exhibit R);[32] and (19) anatomical sketch of the location of the gunshot wounds sustained by Inspector Barte prepared by Dr. Vertido.[33]

For its part, the defense presented the testimonies of appellant and Ferdinand Ravino (Ravino) to refute the foregoing accusation. No documentary evidence was presented. Appellant denied any liability and interposed the defense of alibi.

Appellant testified that at the time of the incident (9:15 p.m., 24 August 2002), he was at Barangay Malad, Calapan City, Oriental Mindoro vacationing at the house of a certain Hector Africa (Africa). He arrived therein on the afternoon of 23 August 2002 and left on the morning of 26 August 2002. He was not acquainted with Inspector Barte and came to know that he was accused of killing Inspector Barte when he arrived at Batangas City from Oriental Mindoro on the afternoon of 26 August 2002. He was informed that he would be "salvaged" for killing Inspector Barte. Hence, he became afraid and hid in his house for two weeks. Thereafter, he surrendered to the mayor of Batangas City who turned him over to the Batangas City police. He alleged that Anacleto and Antonette testified against him because he did not support the candidacy of Antonette during the previous election for *barangay* captain where Antonette lost. He supported then the candidacy of the incumbent *barangay* captain.[34]

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[28] *Id.*, Exh. "N".

[29] *Id.*, Exh. "O".

[30] *Id.*, Exh. "P".

[31] *Id.*, Exh. "Q".

[32] *Id.*, Exh. "R".

[33] *Id.*, Exhs. "S" and "T".

[34] TSN, 7 December 2004, pp. 3-8.

Ravino narrated that he has known appellant since 1991 because they were co-workers in Toyota Motors, Batangas City. On 24 August 2002, at around 12:00 in the afternoon, Africa came to his auto mechanic shop in Calapan, Oriental Mindoro and talked to him. Africa requested him to go to his house at Barangay Malad, Calapan City, Oriental Mindoro, to fix Africa's car and thereafter to drink liquor with him. Subsequently, he went to Africa's house arriving therein at 5:30 p.m. of the same day. He saw Africa, appellant and one helper of Africa inside the house. Africa told him that appellant was taking a vacation at his house. After fixing Africa's car, he, Africa and appellant had a drinking spree until 11:00 p.m. of the same day. Thereupon, he left Africa's house. Later, he and appellant met at the city jail of Batangas City. He was detained for a criminal charge while appellant was detained on the charge of killing Inspector Barte. During their detention, appellant requested him to testify in his favor to which he acceded. He was still a detainee at the time he testified in the RTC as regards the instant case.[35]

After trial, the RTC rendered a Decision on 4 July 2006 convicting appellant of murder.[36] Appellant was sentenced to *reclusion perpetua*. He was also ordered to pay the heirs of Inspector Barte the amounts of ₱50,000.00 as compensatory damages, ₱109,250.00 as actual damages, ₱50,000.00 as moral and exemplary damages, ₱4,212,312.72 for loss of earning capacity, and cost of suit. The dispositive portion of the RTC Decision reads:

> In view of all the foregoing and upon evidence established by the Prosecution, accused Agripino Guevarra *y* Mulingtapang *alias* "Boy Dunggol" is hereby found Guilty beyond a reasonable doubt of committing the crime of Murder under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659. The proper penalty would have been death by lethal injection but with the repeal of the death penalty pursuant to Republic Act No. 9346 which was recently signed into law by the President on June 22, 2006, imposition thereof is no longer possible. Consequently, herein accused is sentenced

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[35] TSN, 2 May 2006, pp. 3-9.

[36] CA *rollo*, pp. 38-44.

to suffer the penalty of *reclusion perpetua* and to pay the costs. Further, he shall pay the private offended party ₱50,000.00 for the death of Major Barte as compensatory damages; ₱109,250.00 as actual damages sustained which were reflected in the official receipts submitted in evidence; ₱50,000.00 as moral and exemplary damages; ₱4,212,312.72 loss of earnings computed on the basis of the pay slip of Major Barte for the month of August, 2002 showing that at the time of his death his full compensation amounted to ₱30,982.00.

The accused maybe credited with his preventive imprisonment if he is entitled to any and directed to be immediately committed to the National Penitentiary in Muntinlupa City.[37]

Appellant appealed to the Court of Appeals. On 16 October 2007, the appellate court promulgated its Decision affirming with modification the RTC Decision.[38] It held that an additional amount of ₱25,000.00 as exemplary damages should also be imposed on appellant because the qualifying circumstance of treachery attended the killing of Inspector Barte. Thus:

WHEREFORE, premises considered, the July 4, 2006 Decision of the Regional Trial Court of Batangas City, Branch IV, is hereby **AFFIRMED** with the *MODIFICATION* that **exemplary damages** in the amount of **₱25,000.00** should also be awarded.[39]

Appellant elevated the instant case before us assigning a single error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[40]

Appellant maintains in his lone assigned error that his testimony and that of his corroborating witness, Ravino, were more credible than the testimonies of Anacleto and Antonette; that his denial

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[37] Records, pp. 191-192.

[38] *Rollo,* pp. 2-19.

[39] *Id.* at 19.

[40] CA *rollo,* p. 28.

and alibi were meritorious; and that the mitigating circumstance of voluntary surrender should be appreciated in his favor.

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[41]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of Anacleto and Antonette credible. As an eyewitness to the incident, Anacleto positively identified appellant as the one who shot Inspector Barte with a short firearm. He was merely one arm's length from Inspector Barte and one meter away from appellant during the incident. In addition, the crime scene was well-lighted by a nearby lamp post and lights coming from the videoke bar which enabled him to recognize appellant. Further, he was familiar with the face of appellant because the latter was his barriomate. Anacleto's direct account of how appellant shot Inspector Barte is candid and convincing, thus:

Q: Now, while you were outside the [videoke] restaurant at around 9:15 in the evening of August 24, 2002, do you remember any untoward incident that happened thereat?

A: Yes, sir.

Q: What was that particular incident?

A: The shooting of Major Barte (Inspector Barte), sir.

Q: Who shot Major Barte?

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[41] *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.

A: Agripino Guevarra *y* Mulingtapang *alias* "Boy Dunggol."

Q: How did it happen that accused was there at that time and said place?

A: I did not notice where he came from, he suddenly appeared.

Q: After he suddenly appeared, what did the accused do?

A: He approached Major Barte and asked "are you Major Barte?" and afterwards he fired shots at Major Barte.

Q: Was Major Barte able to answer that question of the accused to him?

A: No ma'am.

Q: What happened to Major Barte after having (sic) shot by the accused?

A: I saw him slumped on his seat on the car, bloodied.

Q: How far were you from Major Barte at that time?

A: About one arm['s] length, ma'am.

x x x x x x x x x

Q: Now, you said Agripino Guevarra is the one who shot to death Major Barte, if he is in Court this morning, would you be able to identify him?

A: Yes, ma'am.

Q: Would you please point to him?

A: (Note: Witness is pointing to the man wearing a yellow shirt seated in the front row of the Courtroom who answers by the name of Agripino Guevarra when he was asked by the Court).[42]

x x x x x x x x x

Q: You stated that while you were talking with Major Barte when the latter was sitted (*sic*) in the front seat, the accused suddenly appeared?

A: Yes, sir.

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[42] TSN, 3 February 2003, pp. 5-6 and 10-11.

Q: Where did he suddenly appear, from your right or left?

A: From my right side, sir.

Q: Where was he at that time in relation to the jeep?

A: On the right side of the jeep, sir.

Q: You are also on the right side of the jeep?

A: Yes, sir.

Q: You are also 1 ½ meters from the jeep?

A: No sir.

Q: How far were you from the jeep?

A: More or less one (1) arm length, sir.

Q: How far was the accused in this case when you first saw him?

A: We were both on the same distance from the jeep, sir.

Q: After you saw the accused suddenly appeared on your right side you also saw him put up his gun?

A: No sir.

Court:

Q: How about you, how far are you from the accused when you first saw him?

A: Almost one (1) meter, sir.[43]

x x x x x x x x x

Q: You stated last time that when the accused asked if he is Major Barte the accused immediately shot Major Barte, is that correct?

A: Yes, sir.

Q: You also stated that the accused shot him five (5) times?

A: No, sir.

Q: How many times did the accused shoot Major Barte?

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[43] TSN, 26 February 2003, pp. 12-13.

A: I heard four (4) shots, sir.

Q: When you say you heard four (4) shots you mean to say you did not see him fired (sic) his gun?

A: I saw it, sir.[44]

Antonette's testimony, corroborating the foregoing testimony of Anacleto, was also clear and reliable. Being an eyewitness to the incident, she pointed to appellant as the one who shot Inspector Barte. Her narration of the incident is truthful, to wit:

Q: After Major Barte occupied the front seat at the right [side] of the driver and your husband was about to board the jeep, what happened next, if any?

A: I heard that gunshot, ma'am.

Q: Upon hearing that gunshot, what did you do?

A: I turned my head where the gunshot came from, ma'am.

Q: And what did you find out?

A: I saw a man shooting a man riding at the right side of the vehicle, ma'am.

Q: Who was being shot by that person?

A: Major Barte, ma'am.

Q: Did you recognize who [shot] Major Barte?

A: Yes, ma'am.

Q: Who is that person?

A: Mr. Agripino Guevarra, ma'am.

x x x x x x x x x

Q: You said that you saw Agripino Guevarra shooting Major Barte, do you know this Agripino Guevarra?

A: Yes, ma'am.

Q: Even before this date?

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[44] *Id.* at 15-16.

A: Yes, ma'am. Being a native of this *barangay* and I have been a barangay councilwoman and he became also a *barangay* tanod.

Q: If he [is] present in Court this afternoon, would you able to identify him?

A: Yes, ma'am.

Q: Would you please point to him?

A: (Witness is pointing to a man wearing a yellow shirt who answers by the name of Agripino Guevarra when he was asked by the Court).[45]

Further, the foregoing testimonies are consistent with documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Anacleto and Antonette to be clear and credible.

Denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[46] Denial and alibi must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters.[47] For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[48]

Appellant testified that he was vacationing in Africa's house at Barangay Malad, Calapan City, Oriental Mindoro at the time (9:15 p.m.) and date (24 August 2002) of the incident. Ravino

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[45] TSN, 3 June 2003, pp. 26-29.

[46] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661-662.

[47] *Dela Cruz v. Court of Appeals*, 414 Phil. 171, 184 (2001); *People v. Lustre*, 386 Phil. 390, 400 (2000).

[48] *Id*.

claimed that, upon arriving at Africa's house in Calapan Oriental, Mindoro at about 5:30 p.m. of the day of the incident, he saw appellant there. Ravino then proceeded to fix Africa's car. After fixing Africa's car, he, Africa and appellant had a drinking spree until 11:00 p.m. of the same day. Be that as it may, Ravino neither categorically stated nor confirmed that appellant was present in Africa's house from the time he was fixing Africa's car at past 5:30 p.m. up to the time he was done with it which was before 11:00 p.m. As mentioned earlier, Ravino merely claimed that he saw appellant in Africa's house at about 5:30 p.m. and after fixing Africa's car, he, Africa and appellant had a drinking spree until 11:00 p.m. Thus, it was highly possible that since Ravino's sight was directed or focused on Africa's car as he was fixing it, he did not notice appellant's departure from Africa's house at past 5:30 p.m. Appellant then proceeded to the videoke bar of Sgt. Vidal in Barangay Kumintang Ibaba, Batangas City, where he killed Inspector Barte at around 9:15 p.m. It was also probable that Ravino did not notice appellant's subsequent arrival in Africa's house, which was before 11:00 p.m., from the crime scene because he was still busy fixing Africa's car. The foregoing view is bolstered by appellant's admission that it would only take him 45 minutes to reach Calapan City, Oriental Mindoro from the Batangas pier *via* a "*Supercat*" boat.[49] There was, therefore, a great possibility that appellant was present at the scene of the crime when it was committed at about 9:15 p.m. of 24 August 2002. Thus, the defense failed to prove that it was physically impossible for appellant to be at or near the crime scene when the incident occurred. Besides, we have held that an alibi becomes less plausible as a defense when it is corroborated only by relatives or friends of the accused.[50]

We agree with the RTC and the Court of Appeals that the qualifying circumstance of treachery and the special aggravating

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[49] TSN, 7 December 2004, p. 11.

[50] *People v. Larranaga*, G.R. Nos. 138874-75, 21 July 2005, 463 SCRA 652, 662; *People v. Calumpang*, G.R. No. 158203, 31 March 2005, 454 SCRA 719, 736; *People v. Datingginoo*, G.R. No. 95539, 14 June 1993, 223 SCRA 331, 335; *People v. Abatayo*, G.R. No. 139456, 7 July 2004, 433 SCRA 562, 579.

circumstance of use of an unlicensed firearm attended the killing of Inspector Barte.

It is settled that aggravating/qualifying circumstances must be alleged in the information and proven during the trial before they can be appreciated.[51]

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 any defensive or retaliatory act which the victim might make.[52] The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution.[53]

In the case at bar, treachery was alleged in the information and all its elements were duly established by the prosecution.

Inspector Barte was sitting inside the jeep when appellant suddenly appeared and approached him. Appellant asked Inspector Barte if he was "Major Barte." However, before Inspector Barte could respond or utter a word, appellant quickly shot him several times in the head and chest with a caliber .45 pistol. The suddenness and unexpectedness of the appellant's attack rendered Inspector Barte defenseless and without means of escape. There is no doubt that appellant's use of a caliber .45 pistol, as well as his act of waiting for Inspector Barte to be seated first in the

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[51] *People v. Simon*, G.R. No. 130531, 27 May 2004, 429 SCRA 330, 353-354; Sections 8 & 9, Rule 110 of the Rules of Court.

[52] Paragraph 16, Article 14 of the Revised Penal Code.

[53] *Velasco v. People*, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 669-670.

jeep before approaching him and of shooting Inspector Barte several times on the head and chest, was adopted by him to prevent Inspector Barte from retaliating or escaping. Considering that Inspector Barte was tipsy or drunk and he was seated inside the jeep where the space is narrow, there was absolutely no way for him to defend himself or escape.

Pertinent provision of Presidential Decree No. 1866, as amended by Republic Act No. 8294,[54] states that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. Appellant's use of an unlicensed firearm in killing Inspector Barte was alleged in the information as a special aggravating circumstance. Such circumstance was also duly proven by the prosecution during the trial. The prosecution presented a certification from the PNP Firearms and Explosives Division which attests that appellant was not a licensed/registered firearm holder.[55]

Appellant's assertion that he was entitled to the mitigating circumstance of voluntary surrender is meritorious. For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) that the offender had not been actually arrested; (2) that the offender surrendered himself to a person in authority; and (3) that the surrender was voluntary.[56]

All of the foregoing requisites are present in the case at bar. Appellant had not been actually arrested by the police or other law enforcers. He surrendered unconditionally to the mayor of Batangas City, a person in authority, thereby saving the police trouble and expenses which it would otherwise incur in his search and capture. The fact that appellant surrendered two weeks after the incident is immaterial. We have held that for voluntary surrender to mitigate an offense, it is not required that the accused

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[54] Passed on 6 June 1997.

[55] Folder of Exhibits, Exh. "F".

[56] *Mendoza v. People*, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 697.

surrender at the first opportunity.[57] As long as the aforementioned requisites are met, voluntary surrender can be appreciated.[58]

We shall now determine the propriety of the penalties imposed on appellant.

Article 248 of the Revised Penal Code states that murder is punishable by *reclusion perpetua* to death. Article 63(4) of the same Code provides that if the penalty is composed of two indivisible penalties, as in this case, and both mitigating and aggravating circumstances attended the commission of the crime, the courts shall reasonably allow them to offset one another in consideration of their number and importance. As earlier determined, the mitigating circumstance of voluntary surrender and the aggravating circumstances of treachery and use of an unlicensed firearm were present in the instant case. Nonetheless, the aggravating circumstance of treachery in this case cannot be applied for offsetting because it was already considered as a qualifying circumstance.[59] Thus, only the aggravating circumstance of use of an unlicensed firearm may be utilized in offsetting the mitigating circumstance of voluntary surrender.

We stated earlier that the use of an unlicensed firearm in murder is a **special** aggravating circumstance and not merely a generic aggravating circumstance. As such, it cannot be offset by an ordinary mitigating circumstance such as voluntary surrender.[60] Thus, the only modifying circumstance remaining in the present case is the special aggravating circumstance of use of an unlicensed firearm. Article 63(1) of the Code provides that if the penalty is composed of two indivisible penalties, as in this case, and there is present only one aggravating circumstance, the greater penalty shall be applied. Consequently, the penalty imposable on appellant is death. However, with the effectivity

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[57] *People v. Saul*, 423 Phil. 924, 936 (2001).

[58] *Id.* at 937.

[59] *People v. Guzman*, G.R. No. 169246, 26 January 2007, 513 SCRA 156, 178.

[60] *Mendoza v. People, supra* note 56 at 697.

of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to appellant shall be *reclusion perpetua*. Said section reads:

> SECTION 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.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides:

> SECTION 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 RTC and the Court of Appeals were correct in imposing the penalty of *reclusion perpetua* on appellant.

As to damages, both courts acted accordingly in awarding civil indemnity[61] to the heirs of Inspector Barte since the award of this damage is mandatory in murder cases.[62] Nevertheless, the amount of ₱50,000.00 imposed as civil indemnity should be increased to ₱75,000.00 based on prevailing jurisprudence.[63] In *People v. Quiachon*,[64] we explained that even if the penalty

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[61] Erroneously referred to as compensatory damage by the RTC.

[62] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

[63] *Id*; *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.

[64] *Id*.

of death is not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 is still proper as the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. In the instant case, the qualifying circumstance of treachery and the special aggravating circumstance of use of unlicensed firearm attended the killing of Inspector Barte. These circumstances were duly alleged in the information and proven during the trial.

The award of moral damages in the amount of ₱50,000.00 is proper in view of the violent death of Inspector Barte and the resultant grief to his family.[65] Likewise, the award of exemplary damages in the amount of ₱25,000.00 is in order because the killing of Inspector Barte was committed with the aggravating circumstances of treachery and use of an unlicensed firearm.[66] Also, the award of ₱109,250.00 as actual damages is appropriate since these were supported by official receipts attached on records.[67]

The heirs of Inspector Barte should also be indemnified for loss of earning capacity pursuant to Article 2206 of the New Civil Code.[68] Consistent with our previous decisions,[69] the formula for the indemnification of loss of earning capacity is:

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[65] *People v. Buban*, *supra* note 62 at 134.

[66] Article 2230 of the Civil Code: "In criminal offenses, exemplary damages as 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."

[67] Folder of Exhibits, Exhs. "I" and "J".

[68] Article 2206 of the Civil Code: "The amount of damages for death caused by a crime or quasi-delict shall be x x x in addition: (1) the defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter. x x x."

[69] *People v. Batin*, G.R. No. 177223, 28 November 2007, 539 SCRA 272, 295, *Manaban v. People*, G.R. No. 150723, 11 July 2006, 494 SCRA 503, 525.

Net Earning Capacity = Life Expectancy x
[Gross Annual Income (GAI) – Living Expenses]
= 2/3 (80 – age of deceased) x (GAI – 50% of GAI).

Inspector Barte's death certificate states that he was 46 years old at the time of his demise.[70] The pay slip issued by the PNP, Camp Crame, Quezon City, to Inspector Barte for August 2002 shows that the latter was earning an annual gross income of ₱371,784.00.[71]

Applying the above-stated formula, the indemnity for the loss of earning capacity of Inspector Barte is ₱4,213,551.00, computed as follows:

Net Earning Capacity = 2/3 (34) x (₱371,784.00 – ₱185,892.00)
= 2/3 (34) x ₱185,892.00.
= ₱4,213,551.00.

Hence, the amount of ₱4,212,312.72 awarded to the heirs of Inspector Barte as indemnity for the latter's loss of earning capacity should be increased to ₱4,213,551.00.

In addition to the damages awarded, we also impose on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.[72]

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 02367, dated 16 October 2007, is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the civil indemnity of appellant is increased from ₱50,000.00 to ₱75,000.00; (2) the indemnity for Inspector Barte's loss of earning capacity is increased from ₱4,212,312.72 to ₱4,213,551.00; and (3) an interest on all the damages awarded at the legal rate of 6% from this date until fully paid is imposed.

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[70] Folder of Exhibits, Exh. "O".

[71] *Id.*, Exh. "M".

[72] *People v. Buban*, *supra* note 62 at 135; *Mendoza v. People*, *supra* note 56 at 702.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 154379. October 31, 2008]

PCI TRAVEL CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (3rd Division) & NUBE-AMEXPEA/PCI TRAVEL EMPLOYEES UNION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; CERTIFICATION AGAINST FORUM-SHOPPING; A PRESIDENT OF A CORPORATION IS AUTHORIZED TO SIGN THE SAME WITHOUT NEED OF A BOARD RESOLUTION. — In the recent case of *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, the Court clarified the issue on whether the President of a corporation is authorized to sign the verification and certification against forum shopping, without need of a board resolution. We quote: It must be borne in mind that Sec. 23, in relation to Sec. 25, of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties

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[*] Per Special Order No. 531, dated 20 October 2008, signed by Acting Chief Justice Leonardo A. Quisumbing, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on leave.

[**] Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation. In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA (G.R. No. 139495, November 27, 2000, 346 SCRA 126, 132-133),* we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan* (*G.R. No. 143389, May 25, 2001, 358 SCRA 240, 246-248*), we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc. v. CA* (*G.R. No. 146125, September 17, 2003, 411 SCRA 211, 217-220),* we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd (Lepanto) (G.R. No. 153885, September 24, 2003, 412 SCRA 101, 109),* we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization. In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case. While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case-to-case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify

the truthfulness and correctness of the allegations in the petition."

2. ID.; ID.; ID.; REINSTATEMENT OF PETITION DISMISSED ON MERE TECHNICALITIES; CASE AT BAR.—With this issue settled, that the President of the corporation can sign the verification and certification without need of a board resolution, there thus exists a compelling reason for the reinstatement of the petition before the Court of Appeals. A perusal of the petition for *certiorari* would reveal that petitioner intended to show the grave abuse of discretion committed by the labor tribunals in not allowing the petitioner the ample opportunity to submit its position paper on the alleged violation of the CBA. The Labor Arbiter and the NLRC viewed it as a waiver on its part and hastened to rule that "since the complainant's allegations remain unrebutted, they are deemed correct and valid." Due process dictates that a person should be given the opportunity to be heard. Unfortunately, this was not accorded to the petitioner and such right was even foreclosed when the appellate court dismissed the petition before it on technical grounds. The policy of our judicial system is to encourage full adjudication of the merits of an appeal. Ends of justice are better served when both parties are heard and the controversy decided on its merits. Thus, in the exercise of its equity jurisdiction, the Court will not hesitate to reverse the dismissal of appeals that are grounded merely on technicalities.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Jonathan P. Sale for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a petition for review seeking to nullify the Resolution[1] of the Court of Appeals, dated March 27, 2001,

[1] *Rollo*, p. 28.

which dismissed the petition for *certiorari* on technical grounds; and the Resolution[2] dated July 10, 2002, denying reconsideration thereof in CA-G.R. SP No. 63635.

Sometime in 1994, respondent NUBE-AMEXPEA/PCI Travel Employees Union filed a Complaint for unfair labor practice against petitioner PCI Travel Corporation. It claimed that petitioner had been filling up positions left by regular rank-and-file with contractual employees, but were performing work which were usually necessary and desirable in the usual business or trade of the petitioner. Respondent prayed that the Labor Arbiter order the petitioner to pay the "contractual employees" the differentials between the wages/benefits of regular employees and the actual wages/benefits paid to them from the first day of their employment, plus moral and exemplary damages, and attorney's fees of not less than ₱300,000.00 per employee.

Petitioner moved to dismiss the complaint on the ground that the Union was not the real party-in-interest. Subsequently, petitioner manifested that while it was ready and willing to prove that said employees were provided by independent legitimate contractors and that it was not engaged in labor-only contracting in a position paper yet to be submitted, petitioner prayed that the Labor Arbiter first resolve the issues raised in their motion to dismiss.

Ruling that a motion to dismiss was a prohibited pleading, the Labor Arbiter rendered a decision on the merits dated October 16, 1998, in favor of the respondent. As culled from the NLRC Decision, the dispositive portion reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Respondent is declared guilty of unfair labor practice;

2. The above-named "contractual employees" are declared regular employees;

3. Respondent is ordered to pay:

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[2] *Id*. at 30.

a. "Contractual Employees" the differentials between the wages and benefits of regular employees and their actual wages and benefits, to be computed by the Socio-Economic Analyst of this Office;

b. Moral damages in the amount of Twenty Thousand (₱20,000.00) Pesos each "contractual employee";

c. Exemplary damages in the amount of Ten Thousand (₱10,000.00) Pesos each "contractual employee"; and

d. Ten percent (10%) of the total award as attorney's fees.[3]

On appeal, the NLRC affirmed with modification the decision of the Labor Arbiter deleting the awards of damages for lack of sufficient basis. It upheld the Labor Arbiter's ruling that a motion to dismiss was a prohibited pleading and that petitioner failed to rebut the respondent's contentions when it allegedly opted not to file a position paper. Aggrieved, petitioner filed a petition for *certiorari* with the Court of Appeals.

On March 27, 2001, the CA issued the assailed Resolution dismissing the petition outright for petitioner's failure to attach copies of pleadings and documents relevant and pertinent to the petition. More importantly, the verification and certification of non-forum shopping was signed by Elizabeth Legarda, President of the petitioner-corporation, without submitting any proof that she was duly authorized to sign for, and bind the petitioner-corporation in these proceedings.

Petitioner filed a motion for reconsideration, alleging that the Rules of Court does not require the submission of proof of due authorization to sign the verification and certification of non-forum shopping for a petition to prosper. Nonetheless, petitioner subsequently filed a manifestation stating that earnest efforts and diligence have been exerted in searching for said board resolution, but to no avail.[4]

Unperturbed, the CA denied the motion for reconsideration stating that without such board resolution or secretary's certificate,

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

[4] *Id*. at 30.

Elizabeth Legarda cannot be deemed fully clothed by the corporation to act for and on its behalf.

Hence, the instant petition. The respondent was required to comment.[5] As borne by the records, several Court resolutions addressed to the respondent, through its counsel, were either returned unserved or unheeded. Respondent then filed a Manifestation with Motion to Resolve[6] averring its inability to file a comment and its willingness to submit the case for resolution based on the records.

The following issues were raised by the petitioner for consideration:

I

THE FINDING OF THE COURT OF APPEALS THAT THE PRESIDENT OF PCI TRAVEL WAS NOT AN AUTHORIZED REPRESENTATIVE OF THE PETITIONER IS ERRONEOUS, AS THE TRUTH OF THE MATTER IS THAT THE ACT OF THE PRESIDENT IN EXECUTING AND SIGNING THE VERIFICATION AND CERTIFICATION AS TO THE CORRECTNESS OF THE MATERIAL DATE AND CERTIFICATION OF NON-FORUM SHOPPING HAS BEEN **AUTHORIZED AND EVEN RATIFIED BY PCI TRAVEL.**

II

CONTRARY TO THE RESOLUTION OF THE COURT OF APPEALS, PETITIONER DID, IN FACT, **SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS** OF RULE 65 OF THE RULES OF COURT.

III

AS **THE PETITION FOR REVIEW IS HIGHLY IMPRESSED WITH MERIT**, COMPELLING REASONS OF JUSTICE AND EQUITY DICTATE THAT A SINGLE TECHNICALITY SHOULD NOT BE GIVEN PREMIUM OVER THE SUBSTANCE OF THE PETITION.[7]

We grant the petition.

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[5] Resolution dated November 27, 2002; *id*. at 103.

[6] *Rollo*, pp. 164-166.

[7] *Id*. at 13-14.

In the recent case of *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*,[8] the Court clarified the issue on whether the President of a corporation is authorized to sign the verification and certification against forum shopping, without need of a board resolution. We quote:

> It must be borne in mind that Sec. 23, in relation to Sec. 25, of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation.
>
> In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA (G.R. No. 139495, November 27, 2000, 346 SCRA 126, 132-133),* we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan (G.R. No. 143389, May 25, 2001, 358 SCRA 240, 246-248),* we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc. v. CA (G.R. No. 146125, September 17, 2003, 411 SCRA 211, 217-220),* we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd (Lepanto) (G.R. No. 153885, September 24, 2003, 412 SCRA 101, 109),* we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.
>
> In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of

[8] G.R. No. 151413, February 13, 2008, 545 SCRA 10, 17-19.

Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case-to-case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."

With this issue settled, that the President of the corporation can sign the verification and certification without need of a board resolution, there thus exists a compelling reason for the reinstatement of the petition before the Court of Appeals. A perusal of the petition for *certiorari* would reveal that petitioner intended to show the grave abuse of discretion committed by the labor tribunals in not allowing the petitioner the ample opportunity to submit its position paper on the alleged violation of the CBA. The Labor Arbiter and the NLRC viewed it as a waiver on its part and hastened to rule that "since the complainant's allegations remain unrebutted, they are deemed correct and valid."[9] Due process dictates that a person should be given the opportunity to be heard. Unfortunately, this was not accorded to the petitioner and such right was even foreclosed when the appellate court dismissed the petition before it on technical grounds. The policy of our judicial system is to encourage full adjudication of the merits of an appeal. Ends of justice are better served when both parties are heard and the controversy decided on its merits. Thus, in the exercise of its equity jurisdiction, the Court will not hesitate to reverse the dismissal of appeals that are grounded merely on technicalities.[10]

WHEREFORE, the petition is *GIVEN DUE COURSE*. The Resolutions of the Court of Appeals, dated March 27, 2001 and

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[9] NLRC Decision, p. 6; *rollo,* p. 57.

[10] *Piglas-Kamao (Sari-Sari Chapter) v. NLRC*, 409 Phil. 735, 745 (2001).

July 10, 2002, are *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for resolution on the merits.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Azcuna,*[**] and *Chico-Nazario, JJ.,* concur.

FIRST DIVISION

[G.R. No. 155758. October 31, 2008]

HEIRS OF JOSE ESPLANA, namely: YOLANDA BOTIN *VDA. DE* ESPLANA, TERESA B. ESPLANA, LIZA B. ESPLANA, SHIRLEY B. ESPLANA, ALMA B. ESPLANA, JACK B. ESPLANA, and LINA B. ESPLANA, *petitioners, vs.* **THE COURT OF APPEALS and HEIRS OF PEDRO DE LIMA, represented by JAIME DE LIMA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FROM THE REGIONAL TRIAL COURT, IN THE EXERCISE OF ITS APPELLATE JURISDICTION, TO THE COURT OF APPEALS. — Sec. 1, Rule 42 of the Rules of Court provides for the manner an appeal by petition for review from the Regional Trial Courts to the Court of Appeals is taken: SECTION 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered

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[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 531 dated October 20, 2008.

[**] Additional member in lieu of Associate Justice Ruben T. Reyes per Special Order No. 521 dated September 29, 2008.

in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. **Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.**

2. ID.; ID.; ID.; ID.; A MOTION FOR A 15-DAY EXTENSION TO FILE A PETITION FOR REVIEW REQUIRES THE FULL PAYMENT OF ALL DOCKET AND OTHER LAWFUL FEES AND DEPOSIT FOR COSTS; CASE AT BAR. — Further, before the Court of Appeals may grant the 15-day extension to file a petition for review, Sec. 1, Rule 42 of the Rules of Court requires the payment of the full amount of the docket and other lawful fees and the deposit of the necessary amount for costs before the expiration of the reglementary period. These, petitioners failed to do. In the Resolution of October 1, 2002 denying petitioners' motion for reconsideration, the Court of Appeals stated that petitioners did not only fail to file their petition for review within the 15-day extension granted, but they also failed to pay the full amount of the docket and other legal fees within the reglementary period, that is, on or before March 8, 2002, the last day for petitioners to file their petition. Motions for extension are not granted as a matter of right but in the sound discretion of the court. Lawyers are expected to be knowledgeable of the rule on the grant of such motion. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.

APPEARANCES OF COUNSEL

Reynaldo L. Herrera for petitioners.
Vicente B. De Lima for private respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for *certiorari* alleging that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions in CA-G.R. SP No. 70106 dated June 27, 2002 and October 1, 2002, which dismissed petitioners' petition for review and denied their motion for reconsideration, respectively.

The facts are as follows:

On July 27, 1995, Jose Esplana filed an action for recovery of ownership and possession, quieting of title with damages against Pedro de Lima before the Municipal Trial Court (MTC) of Baao, Camarines Sur.

The MTC tried and decided the case as an action for forcible entry. On November 28, 1995, the MTC dismissed the complaint and ordered plaintiff Jose Esplana to pay defendant Pedro de Lima attorney's fees, the expenses of litigation in the amount of ₱10,000 and the costs of the suit.

On appeal, the Regional Trial Court (RTC) of Iriga City, Branch 35, in an Order dated February 28, 1997, held that the forcible entry aspect was only incidental to the issue of ownership. It remanded the case to the MTC for the court to decide the issue of ownership, which the parties agreed upon from the outset, and all the issues raised in the Complaint.

Pursuant to the RTC Order, the MTC tried the case anew to resolve who between the contending parties was the real owner of the property. Defendant Pedro de Lima died and was substituted by his son, Jaime de Lima.

The parcels of land under litigation are irrigated ricelands with an aggregate area of 6,152 square meters situated in Barangay Sagrada, Baao, Camarines Sur. They form part of the intestate estate of the late spouses Victor Esplana and Florencia Pereira.* Florencia died in 1967, while Victor died on January 5, 1982. They were survived by five children, namely, Mercedes, Crisanta, Regina, Jose and Rufino. Rufino died in 1988.

Plaintiff Jose Esplana contended that he was the owner of the subject property by virtue of the Deed of Absolute Sale executed in his favor by his father, Victor Esplana, in 1978. While defendant Pedro de Lima claimed that he was the owner of the subject property having purchased the same from the rightful owners, Mercedes, Crisanta and Regina, all surnamed Esplana (Esplana sisters), by virtue of a Deed of Absolute Sale notarized by Atty. Paulo Briones on June 30, 1995, which sale was admitted by the Esplana sisters.

In a Decision dated April 14, 2000, the MTC found the preponderance of evidence in favor of the defendant; hence, it dismissed the Complaint. The dispositive portion of the decision reads:

> WHEREFORE, for failure of the plaintiff to establish a valid cause of action, the complaint is, as it is, hereby dismissed. Plaintiff's exhibit "A" being a spurious and/or falsified document, the same is declared null and void *ab initio*; consequently, all deeds or transactions executed by the plaintiff subsequent to its execution covering or affecting the land bought by the defendant from the Esplana sisters is/are likewise declared null and void and of no legal effect whatsoever. Particularly, the tax declaration/s generated by the Assessor's Office in the name of the plaintiff by virtue or pursuant to exhibit "A" is/are declared without legal basis and are hereby ordered cancelled also.
>
> As regards defendant's counter-claim, the plaintiff is directed to pay the defendant, attorney's fees and expenses of litigation in the amount of ₱20,000.00 and to pay the costs of suit.

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* Also referred to as Ferrera in the MTC Decision dated April 14, 2000.

Defendant's title to the land in question is quieted and for lack of legal and factual basis, the Third-Party Complaint is, as it is hereby dismissed.[1]

Jose Esplana appealed the MTC decision to the RTC.

A certification from the Office of the Civil Registrar shows that Jose Esplana died on December 12, 2001.

In a Decision dated February 6, 2002, the RTC of Iriga City, Branch 34, stated that the issues raised before it were factual in character. Since the factual finding of the MTC was supported by evidence on record, the RTC affirmed the decision of the MTC *in toto* and dismissed the appeal.

Jose Esplana's counsel received a copy of the RTC decision on February 21, 2002.

On March 7, 2002, Jose Esplana's counsel filed before the Court of Appeals a motion for extension of 30 days within which to file a petition for review reckoned from March 8, 2002. He stated that he could not submit the petition on the deadline, March 8, 2002, due to Jose Esplana's untimely death, his day to day court appearance and the voluminous paper work in his office.

On May 16, 2002, the Court of Appeals issued a Resolution granting petitioners only 15 days, reckoned from March 8, 2002 or until March 23, 2002, within which to file the petition for review subject to the caveat that a petition filed after March 23, 2002 shall be expunged from the records of the case.

Petitioners' counsel received a copy of the Court of Appeals' Resolution on May 29, 2002. However, he already filed the petition for review on April 5, 2002, which was within the 30-day extension requested for.

In a Resolution promulgated on June 27, 2002,[2] the Court of Appeals dismissed the petition for review and expunged it from

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[1] *Rollo,* pp. 58-59.

[2] Annex "E", *rollo,* p. 72.

the records of the case for having been filed out of time on April 5, 2002, instead of the deadline, March 23, 2002.

Petitioners' counsel received a copy of the Resolution on July 29, 2002. Petitioners, through counsel, filed a Manifestation with Motion for Reconsideration alleging that they filed the motion for extension to file the petition for review within 30 days from March 8, 2002 considering that the original petitioner, Jose Esplana, had just died and they had to attend the wake and that they had just manifested their desire to appeal the case of their father. Attached to the Manifestation was the Death Certificate of Jose Esplana showing that he died on December 12, 2001. Thus, petitioners alleged that their failure to file the petition on time was due to the sudden death of their father and the inefficiency of the postal service.

The Court of Appeals denied petitioners' motion for reconsideration in a Resolution promulgated on October 1, 2002.[3]

Hence, this petition.

The issue is whether or not the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions promulgated on June 27, 2002 and October 1, 2002.

Petitioners, the heirs of Jose Esplana, contend that they could have filed the petition for review before the deadline (March 23, 2002) if they received before the deadline the Court of Appeals' resolution on their motion for extension of time to file the petition for review. However, their motion was resolved by the Court of Appeals only on May 16, 2002 or after the extended period granted had already expired. They received the Resolution dated May 16, 2002 only on May 29, 2002, after they had already filed their petition for review on April 5, 2002. They claim that the non-compliance with the Resolution dated May 16, 2002 is clearly due to the delay in the postal service.

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[3] Annex "B", *rollo*, p. 66.

Petitioners also submit that the 15-day extension to file a petition for review under Sec. 1, Rule 42 of the Rules of Court is not a strict and rigid rule for it allows a further extension of 15 days for the most compelling reason, which in this case is the death of the original party, Jose Esplana; the observance of his wake; and the indecision of his heirs to pursue the case on appeal.

Petitioners pray that the Court annul and set aside the Court of Appeals' Resolutions dated June 27, 2002 and October 1, 2002 and direct the Court of Appeals to resolve the petition for review on the merits.

The petition is without merit.

Sec. 1, Rule 42 of the Rules of Court provides for the manner an appeal by petition for review from the Regional Trial Courts to the Court of Appeals is taken:

SECTION 1. *How appeal taken; time for filing*. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. **Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.**

Sec. 1, Rule 42 of the Rules of Court is very clear that petitioners are allowed an extension of only 15 days to file a petition for review with the Court of Appeals. Although a further extension not to exceed 15 days may be granted for the most

compelling reason,[4] the grounds stated by petitioners do not entitle them to a further extension.

Petitioners' motion for extension was grounded on the untimely death of the original party, Jose Esplana, their counsel's day to day court appearance and the voluminous paper work in said counsel's office. The stated grounds for the motion for extension warranted the grant of a 15-day extension by the Court of Appeals that would end on March 23, 2002.

Petitioners filed their petition for review on April 5, 2002, which was beyond the 15-day extension granted by the Court of Appeals, although it was within the 30-day extension they requested for.

Petitioners submit in their Reply that they are entitled to a further extension of 15 days under Sec. 1, Rule 42 of the Rules of Court for these compelling reasons: the death of the original party, Jose Esplana; the observance of his wake; and their (petitioners) indecision to pursue the case on appeal.

The Court is not persuaded.

The death certificate[5] presented by petitioners before the Court of Appeals showed that Jose Esplana died on December 12, 2001. Taking into consideration our custom in holding a wake, it can be assumed that the wake ended sometime in December, 2001. Petitioners' counsel received the RTC Decision dated February 6, 2002 on February 21, 2002, which is more than two months after the death of Jose Esplana. At the time of notice of the RTC Decision, petitioners were just undecided about appealing the RTC decision to the Court of Appeals.

The Court holds that petitioners' indecision to appeal their case before the Court of Appeals is clearly not a compelling reason to grant them a further extension of 15 days to file their petition for review.

Further, before the Court of Appeals may grant the 15-day extension to file a petition for review, Sec. 1, Rule 42 of the

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[4] *Bernardo v. People*, G.R. No. 166980, April 3, 2007, 520 SCRA 332.

[5] Annex "A", CA *rollo*, p. 92.

Rules of Court requires the payment of the full amount of the docket and other lawful fees and the deposit of the necessary amount for costs before the expiration of the reglementary period. These, petitioners failed to do.

In the Resolution of October 1, 2002 denying petitioners' motion for reconsideration, the Court of Appeals stated that petitioners did not only fail to file their petition for review within the 15-day extension granted, but they also failed to pay the full amount of the docket and other legal fees within the reglementary period, that is, on or before March 8, 2002, the last day for petitioners to file their petition.

Motions for extension are not granted as a matter of right but in the sound discretion of the court.[6] Lawyers are expected to be knowledgeable of the rule on the grant of such motion. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.[7]

In fine, the Court of Appeals did not gravely abuse its discretion in issuing the Resolutions.

WHEREFORE, the petition is *DISMISSED*. The Resolutions of the Court of Appeals in CA-G.R. SP No. 70106 dated June 27, 2002 and October 1, 2002 are hereby *AFFIRMED*.

No costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Brion, JJ.,* concur.

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[6] *Supra*, note 2.

[7] *Videogram Regulatory Board v. Court of Appeals*, G.R. No. 106564, November 28, 1996, 265 SCRA 50.

SECOND DIVISION

[G.R. No. 156882. October 31, 2008]

ASSOCIATED LABOR UNIONS (ALU) and DIVINE WORD UNIVERSITY EMPLOYEES UNION-ALU (DWUEU-ALU), *petitioners, vs.* **COURT OF APPEALS, THE ROMAN CATHOLIC ARCHBISHOP OF PALO, LEYTE, and DIVINE WORD UNIVERSITY OF TACLOBAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; LEGAL PERSONALITY, LACK OF; CASE AT BAR. — It bears stressing that the March 8, 1996 RTC Order held that the dismissal of Cadastral Case No. 95-04-08 mooted the resolution of the Union's motion for intervention. Likewise, the RTC did not allow intervention in its June 7, 1996 Order as it denied the RCAP's motion for reconsideration on the ground of laches. Since it did not question these RTC orders which lapsed into finality later, the Union cannot be said to have acquired any legal personality to intervene or participate in the instant case. Therefore, the appellate court did not gravely abuse its discretion in holding that the Union has no legal personality to participate in the proceedings of the instant case, and consequently, the instant petition of the Union is dismissible on this ground alone.

2. ID.; ID.; JUDGMENT, EXECUTION OF; JUDGMENT LIEN OVER SUBJECT PROPERTIES NON-EXISTENT AS IT HAS NOT BEEN SHOWN THAT A LEVY ON EXECUTION HAS BEEN IMPOSED OVER THE SUBJECT PROPERTIES. — The instant petition will nevertheless fail even if we concede that the Union has legal personality to institute it. The judgment lien over the subject properties is really non-existent as it has not been shown that a levy on execution has been imposed over the subject properties. While the Decision in G.R. No. 91915 is indeed final and executory, such reality does not *ipso facto* burden all the lands and properties owned by the SVD over which the DWUT is erected, absent proof that the SVD cannot pay its adjudicated obligations

and that a levy on execution was indeed made over the subject properties.

3. ID.; ID.; ID.; ID.; ARTICLE 110 OF THE LABOR CODE AND ARTICLES 2242, 2243 AND 2244 OF THE CIVIL CODE DO NOT COVER THE SUBJECT PROPERTIES. — We agree with the RCAP that a judgment lien over the subject properties has not legally attached and that Art. 110 of the Labor Code, in relation to Arts. 2242, 2243, and 2244 of the Civil Code on concurrence and preference of credits, does not cover the subject properties. Art. 110 of the Labor Code applies only to cases of bankruptcy and liquidation. Likewise, the abovementioned articles of the Civil Code on concurrence and preference of credits properly come into play only in cases of insolvency. Since there is no bankruptcy or insolvency proceeding to speak of, much less a liquidation of the assets of DWUT, the Union cannot look to said statutory provisions for support.

4. ID.; ID.; THEORY OF THE CASE; A PARTY CANNOT BE ALLOWED TO TAKE OPPOSITE POSITIONS ON THE SAME ISSUE; CASE AT BAR. — The Union likewise cannot be permitted to take two opposite positions on the issue of the stipulated reversionary right of RCAP over the subject properties. It cannot invoke such reversionary right of RCAP to render the RCAP solidarily liable with the DWUT in the RAB case while, at the same time, resisting the annotation of that reversionary right in the instant case.

5. CIVIL LAW; LACHES; ELEMENTS. — On the issue of laches, we agree and so hold that it is inapplicable to the instant case. *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon* explains the concept of laches in this wise: According to settled jurisprudence, "laches" means "the failure or neglect, for an unreasonable and unexplained length of time, to do that which —by the exercise of due diligence — could or should have been done earlier." Verily, laches serves to deprive a party guilty of it of any judicial remedies. Its elements are: (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant

that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred. In *Santiago v. Court of Appeals*, we explained that there is "no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances."

6. ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. — Of the foregoing elements, the fourth and most important element, that is, injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held barred, is not present under the premises. As the CA aptly observed, no prejudice can result from the annotation pleaded by the RCAP since the SVD, the property purchaser in the October 1, 1958 transaction, did not oppose the annotation of the conditions, restrictions, and a reversionary right of the RCAP over the subject properties, as evidenced by a manifestation the DWUT filed before the trial court. More so, no prejudice can befall the Union for no judgment lien has attached or been imposed over the subject properties and, as earlier explained, there is no showing that the subject properties are the only properties the DWUT has or that its other assets and properties are insufficient to meet its obligations. Thus, failing to show any actual interest over the subject properties that need judicial protection, the Union will not suffer any damage with the annotation on SVD's titles of the conditions, restrictions, and a reversionary interest of the RCAP.

7. CIVIL LAW; SALES; DEED OF SALE; FOR PURPOSES OF VALIDITY BETWEEN PARTIES, SAME NEED NOT BE IN A PUBLIC DOCUMENT; CASE AT BAR. — Indeed, there is no dispute as to the existence and due execution of the October 1, 1958 Deed of Sale in question. Its validity is immediately apparent from the fact that the RCAP's titles over the properties covered by the deed had been canceled and new TCTs issued in the name of the SVD. The fact that the deed is not notarized is of little moment because, for purposes of validity between the parties, a deed of sale need not be in a public document. With the judicial acquiescence of the SVD to the annotation, the subject matter of the instant case, we so hold such to be in order.

APPEARANCES OF COUNSEL

Seno Mendoza and Associates Law Office for petitioners.
Angara Abello Concepcion Regala and Cruz for Divine Word University of Tacloban.
Padilla Law Office for Roman Catholic Archbishop of Palo, Leyte.

D E C I S I O N

VELASCO, JR., *J.*:

Petitioners Associated Labor Unions and Divine Word University Employees Union-ALU (Union) represented the Union members which prevailed in the labor case entitled *Divine Word University of Tacloban v. Secretary of Labor and Employment*[1] under G.R. No. 91915 and promulgated on September 11, 1992. A direct consequence of the case was that the Divine Word University of Tacloban (DWUT) ended up owing petitioners over a hundred million pesos for unpaid benefits.

The Roman Catholic Archbishop of Palo, Leyte (RCAP) is a corporation sole which sold to *Societas Verbum Dei* (SVD) or the Society of the Divine Word the subject 13 parcels of land, to wit: Lot Nos. 529, 4901, 528, 2067, 498, 507, 497, 506, 508, 2068E, 2068D, 2065, and 2410, the last four of which were untitled when the sale was concluded. The Deed of Sale[2] executed on October 1, 1958 contained the following conditions and restrictions, among others:

> IV. That the SOCIETY OF THE DIVINE WORD shall use these lands and properties for educational purposes, especially and as far as possible, for the maintenance and further development of the institution known as the ST. PAUL'S COLLEGE;
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> x x x x x x x x x

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[1] 213 SCRA 759.

[2] *Rollo*, pp. 73-74.

VI. That the above described properties and all improvements and any land, buildings or equipment which shall have been later acquired by the ST. PAUL'S COLLEGE and which are in direct and actual use by the College, as such, **shall be turned over to the ownership and possession of the Roman Catholic Bishop of Palo** in case there is or are circumstances which will be beyond the control of the contracting parties forcing the **abandonment of educational and religious work of the Society of the Divine Word** with no hope for its resumption in the foreseeable future, that in this case the terms of the conversion of the property rights shall be determined by the Apostolic [Nunciature] in Manila and/or the Apostolic See in Rome. (Emphasis added.)

While the conveying document was not notarized, the SVD was able to secure the corresponding transfer certificates of title (TCTs) over the subject lots, but the deed conditions, restrictions, and reversionary right of the RCAP were not annotated on the new titles.

It must be noted that before the sale, the Tacloban Catholic Institute, a school then run by the RCAP, was already standing over some of the properties sold. At the time of the sale, the school had been renamed St. Paul's College. In line with the purpose of the sale, that is, to further educational and religious work, the SVD would later rename St. Paul's College the Divine Word College and then DWUT when the school attained university status.

Due to labor unrest, DWUT, run by the SVD, and petitioners engaged in a protracted legal battle from 1988 until the finality of the decision in the *Divine Word University of Tacloban* case on February 11, 1994, or shortly after the Court denied DWUT's motion for reconsideration on January 19, 1994. By then, DWUT's liability to petitioners amounted to PhP 200 million, more or less.

On April 27, 1995, the RCAP filed a petition[3] before the Regional Trial Court (RTC), Branch 8 in Tacloban City, docketed as Cadastral Case No. 95-04-08 and entitled "In the Matter of

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[3] *Id.* at 70-72.

the Annotation of Encumbrances on Certain Titles [in the Name of Divine Word University of Tacloban] to Show Restrictions on Use and a Reversionary Interest Therein." In it, the RCAP prayed for an order directing the Registry of Deeds of Tacloban City to register the October 1, 1958 Deed of Sale and annotate on the corresponding SVD titles the conditions, restrictions, and a reversionary interest of the RCAP stipulated in the deed.

On May 9, 1995, DWUT issued notices to petitioners' members, advising them of the decision of the DWUT Board of Trustees to close the university starting academic year 1995-1996, or on June 16, 1995, and, thus, to consider themselves dismissed effective at the close of business hours of June 15, 1995.

Meanwhile, on July 7, 1995, the National Conciliation and Mediation Board ordered DWUT to pay PhP 163,089,337.57 to the members of petitioner Union as partial satisfaction of the January 19, 1994 final resolution of this Court in G.R. No. 91915.

Prompted by the closure of DWUT and the resulting termination of its members' services, the Union filed a complaint, as later amended,[4] against DWUT, its Board of Trustees, and the RCAP for *Unfair Labor Practice, Illegal Dismissal, and Damages* before the Regional Arbitration Branch (RAB) No. VIII in Tacloban City, docketed as NLRC Case No. RCB-VIII-7-0299-95. The Union alleged in its complaint that the sale of the subject properties over which the DWUT is located was incomplete due to the adverted conditions, restrictions, and a reversionary right of the RCAP over the subject properties. What is more, the RCAP did not, despite the sale, sever its employment relations with DWUT which, thus, rendered the RCAP solidarily liable with DWUT for the payment of the benefits of the Union members.

On August 3, 1995, petitioners filed their Motion to Intervene in Cadastral Case No. 95-04-08, asserting their legal interest over the subject properties, such interest, according to them,

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[4] *Id.* at 98-113.

emanating from a judgment lien over the subject properties based on the Entry of Final Judgment dated February 11, 1994 under G.R. No. 91915. And relying on Article 110 of the Labor Code in relation to Arts. 2242, 2243, and 2244 of the Civil Code on concurrence and preference of credits, they asserted preferential rights over the subject properties now owned by and registered under the name of the SVD.

On March 8, 1996, the RTC issued an Order[5] dismissing the petition in Cadastral Case No. 95-04-08.

The RTC held that it has no jurisdiction over the case for annotation owing to what it considered as petitioners' right to a judgment lien referred to earlier. The trial court also held that the RCAP violated SC Circular No. 04-94 on forum shopping on account of the pendency of NLRC Case No. RCB-VIII-7-0299-95 where he was impleaded. Finally, the trial court deemed as moot the resolution of RCAP's formal offer of evidence and petitioners' motion to intervene.

Unsatisfied, the RCAP filed a motion for reconsideration faulting the RTC for misappreciating the facts of the case, the evidence adduced, and the applicable laws. He argued that the RTC has jurisdiction over all cadastral cases, like the instant case, in accordance with Section 2 of Presidential Decree No. 1529 entitled *Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes*, as applied in *Ignacio v. Court of Appeals*[6] and related cases.[7] Continuing, the RCAP contended that he precisely filed the cadastral case because the October 1, 1958 Deed of Sale was not notarized, adding that the registration and annotation process would be ministerial on the part of the register of deeds had the sale been in a public document.

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[5] *Id.* at 29-30. Penned by Judge Mateo M. Leanda.

[6] G.R. No. 98920, July 14, 1995, 246 SCRA 272.

[7] *Quiroz v. Manalo*, No. L-48162, June 16, 1992, 210 SCRA 60; *Philippine National Bank v. International Corporate Bank*, G.R. No. 86679, July 23, 1991, 199 SCRA 508; *Vda. de Arceo v. Court of Appeals*, G.R. No. 81401, May 18, 1990, 185 SCRA 489.

Moreover, the RCAP asserted that the reference to the complaint in NLRC Case No. RCB-VIII-7-0299-95 was only made to underscore the fact that the Union duly acknowledged in the complaint the existence and due execution of the October 1, 1958 Deed of Sale. Besides, he pointed out, DWUT, by its manifestation filed before the trial court, did not question the due execution of the deed. Anent the issue of a judgment lien, the RCAP contended that he was never a party in the labor case under G.R. No. 91915 and, hence, could not be bound by the decision in it, much less by its execution. Finally, he denied violating the circular on forum shopping, alleging that the Union filed its complaint in NLRC Case No. RCB-VIII-7-0299-95 two months after he filed the cadastral case for annotation.

The RTC by an Order[8] dated June 7, 1996 denied RCAP's motion for reconsideration.

While it concurred with the RCAP's arguments set forth in his motion for reconsideration, the trial court still denied the motion on the ground of laches, noting that it took the RCAP 37 years after the execution of the deed of sale before taking judicial action to assert his rights.

Aggrieved, the RCAP timely filed his Notice of Appeal assailing the above orders of the trial court before the Court of Appeals (CA). The appeal was docketed as CA-G.R. CV No. 56482.

In the meantime, on February 24, 1997, the RCAP, the DWUT, and the Union entered into a Memorandum of Agreement[9] (MOA) whereby they agreed on the following: (1) the Union would withdraw NLRC Case No. RCB-VIII-7-0299-95 against DWUT and the RCAP; (2) DWUT would pay the Union PhP 100 million as final settlement of G.R. No. 91915 (NCMB-RB-80NS-04-024-88) and NLRC Case No. RCB-VIII-7-0299-95; (3) DWUT would continue to recognize the Union as the sole bargaining agent for collective bargaining agreement (CBA); and (4) DWUT and the Union would negotiate and enter into a new CBA in lieu of the CBA imposed in G.R. No. 91915.

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[8] *Rollo,* pp. 31-32.

[9] *Id.* at 114-120.

For the payment of the final settlement of PhP 100 million, it was agreed that PhP 15 million should be paid upfront, while payment of the remaining PhP 85 million should be by *dacion en pago*. Covered by the *dacion en pago* arrangement were the Imelda Village and a 1,000-sq. meter property known as San Jose land. The MOA signing paved the way for the re-opening of the DWUT.

On April 29, 2002, the CA rendered the assailed decision,[10] reversing the March 8, 1996 and June 7, 1996 Orders of the RTC and directed the annotation of encumbrances on the TCTs of the subject properties to show the restrictions on use and reversionary interest of the RCAP. The decretal portion of the CA's decision reads:

> WHEREFORE, premises considered, the Orders of the court *a quo* dated 08 March 1996 and 07 June 1996 respectively are hereby REVERSED. The petition for the annotation of encumbrances on certain titles to show restrictions on use and a reversionary interest therein is GRANTED.
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> SO ORDERED.

At the outset, the CA noted that the RTC failed to categorically resolve the Union's motion for intervention under Sec. 2 of Rule 12, as amended by Sec. 1, Rule 19 of the Rules of Court, since the RTC merely stated in its March 8, 1996 Order that the resolution of the motion for intervention was mooted. Noted, moreover, was the fact that said order became final as against the Union on account of its failure to question the order within the reglementary period available to it. Consequently, the CA held that the Union cannot, on appeal, be considered a proper party in the instant case, as it did not acquire personality to be a party to the proceedings in the case. Thus, the CA treated as mere scrap of paper the Union's appellee's brief.

In reversing the assailed RTC orders, the CA disagreed with the trial court's finding and application of the equitable remedy

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[10] *Id.* at 36-48. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Mario L. Guariña III.

of laches. Relying on *Eduarte v. Court of Appeals*[11] and related cases,[12] where the Court applied laches to bar judicial remedies in the plaintiff's exercise of legal rights, as allowing plaintiff to do so would be inequitable and unjust to the defendant, the CA held that the RCAP was not barred by laches from asserting his legal right to cause the annotation of the pertinent paragraphs of the deed of sale on the TCTs covering the subject properties. It ratiocinated that despite the lapse of 37 years, the annotation would not be inequitable or prejudicial to any party since the SVD, under whose name the TCTs of the subject properties were issued, did not interpose any objection to the annotation. It noted that the June 7, 1996 RTC Order did not specify the party who would be prejudiced by the annotation.

The Union's motion for reconsideration was rejected by the CA through the assailed January 20, 2003 Resolution.[13]

Hence, we have this Petition for Review on *Certiorari* under Rule 45, raising the following issues for our consideration:

WHETHER THE COURT OF APPEALS ERRED IN ALLOWING THE ANNOTATION OF ENCUMBRANCE ON CERTAIN [TITLES] TO SHOW RESTRICTIONS ON USE AND REVERSIONARY INTERESTS THEREIN

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN CONSIDERING THE APPELLEES' BRIEF OF PETITIONERS AS A MERE SCRAP OF PAPER AND ASSAIL[ING] THE PERSONALITY OF THE PETITIONER[S] IN THE INSTANT CASE[14]

On the first issue, petitioners argue that the appellate court erred in not affirming and applying the equitable remedy of

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[11] G.R. No. 121038, July 22, 1999, 311 SCRA 18.

[12] *Vda. de Cabrera v. Court of Appeals*, G.R. No. 108547, February 3, 1997, 267 SCRA 399; *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, November 14, 1996, 264 SCRA 181; *Republic v. Sandiganbayan*, G.R. No. 112708, March 29, 1996, 255 SCRA 438.

[13] *Rollo*, p. 49.

[14] *Id.* at 18.

laches. They assert that due to the adjudged substantial liabilities of DWUT pursuant to G.R. No. 91915 and for which it is hard put of meeting, the subject properties over which DWUT stands must be used. Considering that no annotations were made on the TCTs covering the subject properties and considering too the resultant judgment lien attaching on them, the desired annotation is clearly prejudicial and inequitable both for the DWUT and petitioners, for how, petitioners wonder, could the school pay its adjudged obligations without the substantial assets composed of the subject properties?

Petitioners contend further that the instant case for annotation was pursued only after they have filed notices of *lis pendens* over the subject properties for the ultimate satisfaction of their adjudicated monetary claims against DWUT. Clearly, they posit, the RCAP is trying to move the subject properties out of the reach of petitioners through the requested annotation. Thus, they conclude that the principle of laches has attached and the annotation of the encumbrance or reversionary right of the RCAP is properly barred.

Corollary to the first issue, petitioners aver under the second issue that the appellate court gravely abused its discretion in holding that petitioners are not prejudiced and will not be affected by the resolution of the instant case for annotation. As petitioners would argue, their rights would greatly be prejudiced since the resolution ordering annotation will not only delay the execution proceedings but will render for naught the final decision of this Court in G.R. No. 91915.

Petitioners also take umbrage of the CA's ruling on the issue of personality of the Union in the instant case as the RCAP never questioned its standing in his opposition to the motion to intervene. Besides, they emphasize, the personality issue was not raised in the proceedings before the trial court and, thus, cannot be raised for the first time on appeal.

On the other hand, the RCAP argues that petitioners have not sufficiently shown that they will be prejudiced by the annotation of his interest over the subject properties. The RCAP contends: *First*, the SVD and DWUT, the parties who could be

so prejudiced, have not opposed the annotation. *Second*, petitioners have not shown that the SVD and DWUT have no other properties to answer for the adjudicated liabilities in G.R. No. 91915. In fact, the February 24, 1997 MOA executed by the Union, DWUT, represented by the SVD, and the RCAP envisioned a final settlement of petitioners' claim without involving the subject properties. *Third*, the judgment lien issue is immaterial since there is as yet no levy on execution over the subject properties. Besides, the preference of credit asserted in connection with the perceived lien is only applicable where there is an insolvency proceeding and payment of debts have to be equitably distributed among the creditors. And *fourth*, the CA can, on appeal, rule on the issue of the Union's personality since an appeal opens the case *de novo* and the appellate court has discretion to rule on issues which it deems are necessary for the proper adjudication of the case, like the matter of personality which the appellate court resolved *motu proprio* and not upon the instance of the RCAP.

Considering the arguments and counter-arguments earnestly pressed by the parties, the main issues to be determined are *first*, whether the Union has acquired legal personality to intervene in the instant case; and *second*, whether laches has set in to bar the RCAP's cause of action.

We answer both issues in the negative.

As the appellate court aptly noted, the RTC did not resolve the motion for intervention of the Union. It bears stressing that the March 8, 1996 RTC Order held that the dismissal of Cadastral Case No. 95-04-08 mooted the resolution of the Union's motion for intervention. Likewise, the RTC did not allow intervention in its June 7, 1996 Order as it denied the RCAP's motion for reconsideration on the ground of laches. Since it did not question these RTC orders which lapsed into finality later, the Union cannot be said to have acquired any legal personality to intervene or participate in the instant case. Therefore, the appellate court did not gravely abuse its discretion in holding that the Union has no legal personality to participate in the proceedings of the

instant case, and consequently, the instant petition of the Union is dismissible on this ground alone.

The instant petition will nevertheless fail even if we concede that the Union has legal personality to institute it. The judgment lien over the subject properties is really non-existent as it has not been shown that a levy on execution has been imposed over the subject properties. While the Decision in G.R. No. 91915 is indeed final and executory, such reality does not *ipso facto* burden all the lands and properties owned by the SVD over which the DWUT is erected, absent proof that the SVD cannot pay its adjudicated obligations and that a levy on execution was indeed made over the subject properties.

We agree with the RCAP that a judgment lien over the subject properties has not legally attached and that Art. 110[15] of the Labor Code, in relation to Arts. 2242, 2243, and 2244 of the Civil Code on concurrence and preference of credits, does not cover the subject properties. Art. 110 of the Labor Code applies only to cases of bankruptcy and liquidation. Likewise, the abovementioned articles of the Civil Code on concurrence and preference of credits properly come into play only in cases of insolvency. Since there is no bankruptcy or insolvency proceeding to speak of, much less a liquidation of the assets of DWUT, the Union cannot look to said statutory provisions for support.

Moreover, we note the utter lack of showing that DWUT has no other assets to answer its obligations. DWUT may have liquidity problems hampering its ability to meet its judicially-imposed obligations. The school, however, appears to have other properties it can and in fact did use to settle its obligations as shown in the February 24, 1997 MOA between DWUT, the Union, and RCAP. A scrutiny of the MOA readily shows that

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[15] ART. 110. *Worker Preference in Case of Bankruptcy*. — In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid.

the subject properties were not included in the assets or properties earmarked to settle DWUT's obligations.

The Court takes judicial notice of the fact that the Union has judicially admitted the existence, due execution, and validity of the October 1, 1958 Deed of Sale with the conditions, restrictions, and a reversionary right of the RCAP embodied in it. In its complaint before the RAB for *Unfair Labor Practice, Illegal Dismissal, and Damages*, the Union impleaded the RCAP as solidarily liable with the DWUT on the Union's monetary claims precisely on the basis of said conditions, restrictions, and a reversionary right of the RCAP. Such averment is a clear admission against the interests of the Union.

The Union likewise cannot be permitted to take two opposite positions on the issue of the stipulated reversionary right of RCAP over the subject properties. It cannot invoke such reversionary right of RCAP to render the RCAP solidarily liable with the DWUT in the RAB case while, at the same time, resisting the annotation of that reversionary right in the instant case.

On the issue of laches, we agree and so hold that it is inapplicable to the instant case. *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon* explains the concept of laches in this wise:

> According to settled jurisprudence, "laches" means "the failure or neglect, for an unreasonable and unexplained length of time, to do that which — by the exercise of due diligence — could or should have been done earlier." Verily, laches serves to deprive a party guilty of it of any judicial remedies. Its elements are: (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.

In *Santiago v. Court of Appeals*, we explained that there is "no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances."[16]

Of the foregoing elements, the fourth and most important element, that is, injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held barred, is not present under the premises. As the CA aptly observed, no prejudice can result from the annotation pleaded by the RCAP since the SVD, the property purchaser in the October 1, 1958 transaction, did not oppose the annotation of the conditions, restrictions, and a reversionary right of the RCAP over the subject properties, as evidenced by a manifestation the DWUT filed before the trial court. More so, no prejudice can befall the Union for no judgment lien has attached or been imposed over the subject properties and, as earlier explained, there is no showing that the subject properties are the only properties the DWUT has or that its other assets and properties are insufficient to meet its obligations. Thus, failing to show any actual interest over the subject properties that need judicial protection, the Union will not suffer any damage with the annotation on SVD's titles of the conditions, restrictions, and a reversionary interest of the RCAP.

Indeed, there is no dispute as to the existence and due execution of the October 1, 1958 Deed of Sale in question. Its validity is immediately apparent from the fact that the RCAP's titles over the properties covered by the deed had been canceled and new TCTs issued in the name of the SVD. The fact that the deed is not notarized is of little moment because, for purposes of validity between the parties, a deed of sale need not be in a public document.[17] With the judicial acquiescence of the SVD to the annotation, the subject matter of the instant case, we so hold such to be in order.

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[16] G.R. Nos. 148777 & 157598, October 18, 2007, 536 SCRA 565, 593-594.

[17] *Tigno v. Aquino*, G.R. No. 129416, November 25, 2004, 444 SCRA 61, 76; citations omitted.

WHEREFORE, we *DENY* this petition and *AFFIRM IN TOTO* the April 29, 2002 Decision and January 20, 2003 Resolution of the CA in CA-G.R. CV No. 56482, with costs against petitioners.

SO ORDERED.

Carpio Morales (Acting Chairperson), Austria-Martinez,[*] *Corona,*[*] and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 163515. October 31, 2008]

ISIDRO T. PAJARILLAGA, *petitioner, vs.* **COURT OF APPEALS and THOMAS T. KALANGEG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEPOSITION; CONSTRUED. — Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial. It should be allowed absent any showing that taking it would prejudice any party. It is accorded a broad and liberal treatment and the liberty of a party to make discovery is well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law. It is allowed as a departure from the accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge, consistent with the principle of promoting just, speedy and inexpensive disposition of every

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[*] Additional members as per April 21, 2008 raffle.

action and proceeding; and provided it is taken in accordance with the provisions of the Rules of Court, *i.e.*, with leave of court if summons have been served, and without such leave if an answer has been submitted; and provided further that a circumstance for its admissibility exists.

2. ID.; ID.; ID.; MAY BE TAKEN AT ANY TIME AFTER THE INSTITUTION OF ANY ACTION WHENEVER NECESSARY OR CONVENIENT. — There is nothing in the Rules of Court or in jurisprudence which restricts a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand. There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition exists against the taking of depositions after pre-trial. There can be no valid objection to allowing them during the process of executing final and executory judgments, when the material issues of fact have become numerous or complicated. Such being the case, there is really nothing objectionable, *per se*, with petitioner availing of this discovery measure after private respondent has rested his case and prior to petitioner's presentation of evidence. To reiterate, depositions may be taken at any time after the institution of any action, whenever necessary or convenient.

3. ID.; ID.; ID.; ID.; CIRCUMSTANCES UNDER WHICH DEPOSITION MAY BE TAKEN. — Under Section 4, Rule 23 of the Rules of Court, depositions may be used for the trial or for the hearing of a motion or an interlocutory proceeding, under the following circumstances: SEC. 4. *Use of depositions*. — . . . x x x (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with

due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and x x x.

APPEARANCES OF COUNSEL

Sagayo & Yulo Law Offices for petitioner.
Fragante Pooten Ferrer Fayre and Associates for private respondent.

D E C I S I O N

QUISUMBING, *Acting C.J.*:

This is a petition for review on *certiorari* of the Decision[1] dated January 26, 2004 and the Resolution[2] dated May 14, 2004 of the Court of Appeals in CA-G.R. SP No. 47526. The appellate court affirmed the Orders[3] dated January 29, 1998 and March 26, 1998 of the Regional Trial Court (RTC) of Bontoc, Mt. Province, Branch 36, which had denied petitioner's Motion for Leave of Court to Take the Deposition of the Defendant Upon Written Interrogatories.

The antecedent facts are as follows:

On November 24, 1995, private respondent Thomas T. Kalangeg filed with the RTC of Bontoc, Mt. Province, Branch 36, a complaint[4] for a sum of money with damages against petitioner Isidro T. Pajarillaga.

Since the parties failed to reach an amicable settlement, trial on the merits ensued. On March 10, 1997, private respondent

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[1] *Rollo*, pp. 9-19. Penned by Presiding Justice Cancio C. Garcia (now a retired member of this Court), with Associate Justices Renato C. Dacudao and Danilo B. Pine, concurring.

[2] *Id.* at 21.

[3] *Id.* at 69 and 74.

[4] *Id.* at 55-59.

presented his first witness. At the next scheduled hearing on August 8, 1997, neither petitioner nor his counsel appeared despite notice. Upon private respondent's motion, the trial court allowed him to present his remaining two witnesses subject to petitioner's cross-examination on the next scheduled hearing on September 2, 1997. But when the case was called on that date, petitioner and his counsel were again absent. Upon private respondent's motion, the trial court declared petitioner to have waived his right of cross-examination and allowed private respondent to make a formal offer of evidence.

In an Order dated October 8, 1997, the trial court admitted all the exhibits formally offered by private respondent. It also scheduled petitioner's presentation of evidence on October 28, 29 and 30, 1997.

Petitioner moved to reset the hearing to November 17, 1997. The trial court granted his motion and reset the hearing to December 15, 1997.

On December 10, 1997, however, petitioner filed a Motion for Leave of Court to Take the Deposition of the Defendant Upon Written Interrogatories[5] on the grounds that: (1) petitioner resides in Manila which is more than four hundred (400) kilometers from Bontoc, Mt. Province; and (2) petitioner is suffering from an illness which prohibits him from doing strenuous activities.

Private respondent opposed the motion. On December 15, 1997, neither petitioner nor his counsel again appeared. Nonetheless, the trial court reset the case to January 12, 1998 for the presentation of petitioner's evidence. What transpired on said date, however, is not disclosed by the records before this Court.

In an Order[6] dated January 29, 1998, the trial court denied petitioner's motion, in this wise:

Considering that the above-entitled case has been pending since November 24, 1995, and hearings thereof have been delayed almost

[5] *Id*. at 65-68.

[6] *Id*. at 69.

always at the instance of the defendant, the latter's motion for leave of Court to take said defendant's deposition upon written interrogatories at this late stage of the proceedings is hereby denied.

Wherefore, in the interest of justice defendant is granted one more chance to adduce his evidence on February 18, 1998, at 8:30 o'clock in the morning. Otherwise, he shall be deemed to have waived his right thereto.

SO ORDERED.

Petitioner moved for reconsideration which the trial court denied. It also reset the hearing to April 20, 1998.[7]

Petitioner elevated the case to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the 1997 Rules of Court. In affirming the trial court's orders, the appellate court ruled that: *First*, the denial of petitioner's motion was not tainted with grave abuse of discretion since the trial court gave petitioner full opportunity to present his evidence. *Second*, petitioner's motion came much too late in the proceedings since private respondent has already rested his case. *Third*, the medical certificate which petitioner submitted to validate his allegation of illness merely contained a remark that the "patient is advised to avoid strenuous activity." It did not state that the travel from Manila to Mt. Province for the scheduled hearings was too strenuous to endanger petitioner's health. *Fourth*, the threats to petitioner's life by private respondent's relatives were belatedly alleged only in his motion for reconsideration.

Dissatisfied, petitioner appealed to this Court on the ground that the Court of Appeals erred in:

. . . DENYING PETITIONER'S PRAYER THAT HIS DEPOSITION BE TAKEN THROUGH WRITTEN INTERROGATORIES IN CONNECTION WITH A CASE WHICH IS BEING HEARD BY THE REGIONAL TRIAL COURT OF BONTOC, MT. PROVINCE THAT CAN BE REACHED AFTER A GRUELLING SEVEN (7) HOUR RIDE TRAVERSING VERY ROUGH AND RUGGED ROADS.[8]

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[7] *Id*. at 74.

[8] *Id*. at 29.

Simply stated, the issue is whether the taking of petitioner's deposition by written interrogatories is proper under the circumstances obtaining in this case.

Petitioner asserts that the trial court should have allowed the taking of his deposition through written interrogatories since: (1) this discovery measure may be availed of by a party as a matter of right; (2) he has good reasons for invoking his right to this discovery measure, *i.e.*, he resides in Manila which is more than four hundred (400) kilometers from Bontoc, Mt. Province and he is suffering from an illness which prohibits him from doing strenuous activities. Petitioner adds that there are serious threats to his life by private respondent's relatives.

Private respondent counters that petitioner could no longer avail of this discovery measure since the trial court has already given him sufficient time to present his evidence and yet he failed to do so. Private respondent adds that petitioner's motion was made purposely to further delay the resolution of the case as it was invoked during the late stage of the proceedings. Private respondent also avers that the medical certificate submitted to show petitioner's illness does not contain any statement that he could not travel from Manila to Mt. Province for the scheduled hearings. In fact, the medical certificate was not even notarized.

After considering the contentions and submissions of the parties, we are in agreement that the petition lacks merit.

Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial.[9] It should be allowed absent any showing that taking it would prejudice any party. It is accorded a broad and liberal treatment and the liberty of a party to make discovery is well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law. It is allowed as a departure from the

[9] *Dulay v. Dulay*, G.R. No. 158857, November 11, 2005, 474 SCRA 674, 681.

accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge, consistent with the principle of promoting just, speedy and inexpensive disposition of every action and proceeding; and provided it is taken in accordance with the provisions of the Rules of Court, *i.e.*, with leave of court if summons have been served, and without such leave if an answer has been submitted; and provided further that a circumstance for its admissibility exists.[10]

There is nothing in the Rules of Court or in jurisprudence which restricts a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand.[11] There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition exists against the taking of depositions after pre-trial. There can be no valid objection to allowing them during the process of executing final and executory judgments, when the material issues of fact have become numerous or complicated.[12]

Such being the case, there is really nothing objectionable, *per se*, with petitioner availing of this discovery measure after private respondent has rested his case and prior to petitioner's presentation of evidence. To reiterate, depositions may be taken at any time after the institution of any action, whenever necessary or convenient.

But when viewed *vis* the several postponements made by petitioner for the initial presentation of his evidence, we are of the view that his timing is, in fact, suspect. The records before us show that petitioner stopped attending the hearings after

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[10] *Hyatt Industrial Manufacturing Corp. v. Ley Construction and Development Corp.*, G.R. No. 147143, March 10, 2006, 484 SCRA 286, 301.

[11] *Jonathan Landoil International Co., Inc. v. Mangudadatu*, G.R. No. 155010, August 16, 2004, 436 SCRA 559, 574.

[12] *Id*.

private respondent presented his first witness. Petitioner offered no excuse for his and his counsel's absences. Moreover, the trial court has set four (4) hearing dates for the initial presentation of his evidence. But he merely moved for its resetting without invoking the grounds which he now presents before us.

Besides, even as we scrutinize petitioner's arguments, we think that he has not sufficiently shown an "exceptional" or "unusual" case for us to grant leave and reverse the trial and appellate courts.

Under Section 4, Rule 23 of the Rules of Court, depositions may be used for the trial or for the hearing of a motion or an interlocutory proceeding, under the following circumstances:

> SEC. 4. *Use of depositions*. – …
>
> x x x x x x x x x
>
> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and
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> x x x x x x x x x[13]

In this case, petitioner invokes distance and illness to avail of the discovery measure. We agree with private respondent that the matter of distance could have been settled had petitioner requested for a change of venue earlier in the proceedings. Petitioner has attended the pre-trial and the hearing where private respondent presented his first witness. He need not await his

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[13] RULES OF COURT, Rule 23, Sec. 4, par. (c).

turn to present evidence before realizing the great inconvenience caused by the enormous distance between his place of residence and the place of hearing.

Nor are we inclined to accept petitioner's claim of illness. As aptly observed by the Court of Appeals, the medical certificate submitted by petitioner merely contained a remark that the "patient is advised to avoid strenuous activity." It was not alleged that the travel from Manila to Mt. Province for the scheduled hearings was too strenuous to endanger petitioner's health.

We also agree with the Court of Appeals that the threats to petitioner's life by private respondent's relatives appear to be a mere afterthought since it was raised only in petitioner's motion for reconsideration of the trial court's denial of his motion for leave. We also note that the incident which gave rise to the alleged threats took place prior to the pre-trial. Surely, petitioner could have informed the trial court of this incident had there been truth to, and serious implication of, his allegation.

Finally, we must emphasize that while the rules on discovery are liberally constructed so as to ascertain truth and to expedite the disposal of cases, the trial court may disallow a deposition if there are valid reasons for so ruling.[14] Here, we find the protracted delay in the litigation at petitioner's instance coupled with the belated and unsubstantiated allegations of illness and threats to petitioner's life, more than sufficient reasons for the trial court to deny petitioner's motion.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated January 26, 2004 and the Resolution dated May 14, 2004 of the Court of Appeals in CA-G.R. SP No. 47526, are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[14] *Republic v. Sandiganbayan*, G.R. No. 112710, May 30, 2001, 358 SCRA 284, 298.

THIRD DIVISION

[G.R. No. 177564. October 31, 2008]

ARTURO REVITA *"alias"* ARTHUR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL JUDGE CAN WEIGH TESTIMONY OF A WITNESS IN LIGHT OF THE DECLARANT'S DEMEANOR, CONDUCT AND POSITION TO DISCRIMINATE BETWEEN TRUTH AND FALSEHOOD. — Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood. This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.

2. ID.; ID.; ID.; CASE AT BAR. — Bryan vividly saw the incident as it was unfolding because it happened right under his nose. He could not have missed it because the victim and the assailant were just close by. Bryan unmistakably identified Arturo as the assailant because right before the latter fired at the victim, the former was able to see at close range the assailant, In fact, Bryan attempted to talk to the assailant when the two bumped into each other. Also, Bryan observed the angry disposition of Arturo immediately before the shooting spree. Considering these facts, even assuming that the crime scene was not lighted, Bryan could still clearly recognize the assailant since the former knew the latter, and the proximity of the two, which was just a few meters away. This Court pored over the records of the case and found that Bryan's candid and straightforward narration of the brutal act perpetrated by Arturo on the night of the incident indubitably deserves credence.

3. ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE TO SHOW ANY DUBIOUS REASON OR IMPROPER MOTIVE WHY A PROSECUTION WITNESS SHOULD TESTIFY FALSELY AGAINST THE ACCUSED OR IMPLICATE HIM IN A SERIOUS OFFENSE, THE TESTIMONY DESERVES FAITH AND CREDIT. — It is unbelievable that 19-year old young barrio boy would concoct a tale surrounding the atrocious killing of his grandmother, and would impute so grave a crime to someone he respected, had it not actually taken place. The defense cannot even come up with a decent imputation that Bryan was impelled by ill motive when he pointed at Arturo as the author of the carnage. This is so because there is no plausible reason why Bryan should testify against Arturo, if the latter has nothing to do with what had happened. This Court has consistently held that where there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or implicate him in a serious offense, the testimony deserves faith and credit. Indeed, as a relative of the victim, Bryan's purpose would be to ensure that the real culprit is punished rather than put the blame on someone who is innocent of the crime.

4. ID.; ID.; ID.; TESTIMONY OF A SINGLE WITNESS, IF CREDIBLE AND POSITIVE AND SATISFIES THE COURT AS TO THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, IS SUFFICIENT TO CONVICT; CASE AT BAR. — So, also, the Court has repeatedly said that the testimony of a single witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict. In the instant case, Bryan gave a clear and convincing narration of the crime, identifying Arturo as responsible thereof. His lone testimony as an eyewitness, therefore, is sufficient to support a conviction.

5. ID.; ID.; ALIBI; INHERENTLY A WEAK DEFENSE AND MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED; CASE AT BAR. — Alibi is an inherently weak defense, and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. The prosecution witness had categorically identified Arturo as the author of the crime. With the positive identification of Arturo, the defense must

demonstrate by positive, clear and satisfactory proof that it was physically impossible for the accused to be at the scene of the crime during its commission. Hence, it is not sufficient that the accused was somewhere else when the crime was committed. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places. In this case, Arturo said that he went to sleep at around 7:30 p.m. of the night in question. Arturo's brother-in-law also claimed that he saw Arturo asleep before 8:00 p.m. His wife also testified that Arturo went to bed a little after 7:00 p.m. of the night. While it may be true that Arturo was asleep before the killing incident took place, there is also a great possibility that Arturo woke up and hurriedly went to the place of the victim and, after killing her, returned to his sister's house at around 8:30 p.m. This thesis gains more significance since Arturo himself admitted than his sister's house is very close to that of the victim, which is only less than 300 meters away. There is, therefore, a huge possibility that Arturo was present at the scene of the crime when it was committed at around 8:00 p.m. of 23 July 2002. Hence, the defense is unsuccessful in demonstrating that it was physically impossible for Arturo to be there at the crime scene or nearby when the killing occurred.

6. ID.; ID.; ID.; LESS PROBATIVE WEIGHT IS GIVEN TO A DEFENSE OF ALIBI WHEN IT IS CORROBORATED BY FRIENDS AND RELATIVES. — Besides, the witnesses who corroborated Arturo's alibi are his close relatives. This Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives, thus: One can easily fabricate an alibi and ask friends and relatives to corroborate it. **When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism.**

7. ID.; ID.; ID.; THERE IS NO STANDARD FORM OF BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE, STARTLING, FRIGHTFUL OR TRAUMATIC EXPERIENCE; CASE AT BAR. — Arturo is clutching at straws in making an issue out of Bryan's inaction to stop the killing of his grandmother, or at least to help her after she was shot by the assailant. There is no standard form

of behavioral response when one is confronted with a strange, startling, frightful or traumatic experience — some may shout, some may faint, and some may be shocked into insensibility. Different people act differently to a given stimulus or type of situation. Bryan's flight from the scene is understandable considering that the harrowing sight he just witnessed was beyond his young mind to take. It is also natural for him to scurry away from the place to avoid incurring the wrath of the assailant. Moreover, Bryan failed to prevent Arturo from killing his grandmother simply because he did not expect that the latter would shoot the victim. Also, Arturo, who was armed with a high-powered rifle, would be too enormous a force to be stalled by the young fellow.

8. ID.; ID.; PARAFFIN TEST; HELD TO BE HIGHLY UNRELIABLE. — Arturo insists that his conviction is tainted by reasonable doubt since the paraffin test conducted on him resulted negative. Suffice it to state that even negative findings of the paraffin test do not conclusively show that a person did not fire a gun. A paraffin test has been held to be highly unreliable. The Court thus once held: Scientific experts concur in the view that the paraffin test has "x x x proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, *viz*: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the direction of a strong wind is against the gunman at the time of firing. x x x.

9. CRIMINAL LAW; HOMICIDE; WHERE NO MITIGATING OR AGGRAVATING CIRCUMSTANCES ARE ALLEGED AND PROVEN, PENALTY SHOULD BE APPLIED IN ITS MEDIUM PERIOD. — Under Article 249 of the Revised Penal

Code, the applicable penalty for homicide is *reclusion temporal*. There being no mitigating or aggravating circumstance alleged and proven in the case at bar, the penalty should be applied in its medium period pursuant to Article 64(1) of the Revised Penal Code, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of *prision mayor* in any of its periods as minimum to *reclusion temporal* in its medium period as the maximum. The range of *prision mayor* is from 6 years and 1 day to 12 years, while *reclusion temporal* in its medium period, ranges from 14 years, 8 months and 1 day to 17 years and 4 months. The RTC imposed on Arturo the indeterminate penalty of six years and one day of *prision mayor* as minimum to 14 years, eight months and one day of *reclusion temporal*, as maximum. Therefore, the penalty imposed by the RTC is in order.

APPEARANCES OF COUNSEL

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

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 15 February 2007 of the Court of Appeals in CA-G.R. CR No. 29903 which affirmed *in toto* the Decision[2] dated 7 November 2005 of the Regional Trial Court (RTC) of Rosales, Pangasinan, Branch 53, finding petitioner Arturo O. Revita (Arturo) guilty of the crime of homicide.

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[1] Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Ruben T. Reyes (now Associate Justice of this Court) and Arcangelita Romilla Lontok, concurring; *rollo*, pp. 95-103.

[2] Penned by Judge Teodorico Alfonso P. Bauzon.

On 26 August 2002, Arturo was charged before the RTC with the crime of Homicide under Article 249 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

> That on or about the 23rd day of July, 2002, in the evening, in Brgy. Rajal, Municipality of Balungao, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an unlicensed firearm, with intent to kill, did then and there, willfully, unlawfully and feloniously attack and shoot Flordeliza Caguioa, inflicting upon her multiple gunshot wounds on the different parts of her body which caused her death, to the damage and prejudice of the heirs of said deceased.[3]

During the arraignment on 25 September 2002, Arturo, with the assistance of counsel *de oficio*, pleaded not guilty.[4] Thereafter, trial on the merits ensued.

The prosecution presented two witnesses: (1) Bryan Caguiao (Bryan), 19-year old grandson of the late victim, Flordeliza Caguioa (Flordeliza), who allegedly saw the actual killing of the latter; and (2) Dr. Monina M. Madriaga (Dr. Madriaga), the Municipal Health Officer of Balungao, Pangasinan, who conducted the autopsy of the corpse of the victim.

As documentary evidence, the prosecution offered the following: (1) Exhibit "A" – Autopsy Report issued by Dr. Madriaga; (2) Exhibit "B" – Death Certificate of Flordeliza; (3) Exhibit "C" – Sworn Statement of Bryan dated 24 July 2002; and (4) Exhibit "D" – Certificate issued by the Firearms and Explosives Division of the Philippine National Police, Camp Crame certifying that Arturo is not a licensed firearm holder.

The totality of evidence offered by the prosecution shows that at around 8:00 o'clock in the evening of 23 July 2002, Bryan and his cousin, Manilyn Rangel (Manilyn), were idly talking at the yard of Flordeliza in Sitio Bantog, Barangay Rajal,

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[3] Records, p. 14.

[4] *Id.* at 61.

Balungao, Pangasinan, when Arturo arrived.[5] Bryan asked Arturo where he was going, but the latter, who looked infuriated, did not reply.[6] Arturo proceeded to the direction of Flordeliza who was coming out of her house towards the terrace. When Arturo was already close to Flordeliza, at the distance of two and a half meters, he shot the latter with a baby armalite several times.[7] Flordeliza fell down. Bryan saw the incident since the place was illuminated by a light coming from his aunt's terrace. After witnessing the shocking incident, Bryan and Manilyn ran away from the scene to a cousin's house nearby.[8]

The following day, Dr. Madriaga conducted an autopsy of the corpse of Flordeliza where she found seven gunshot wounds, four of which were entry wounds and the three others being exit wounds.[9] She observed that three of the four entry wounds were fatal.[10] She then concluded that the ultimate cause of the victim's death was severe hemorrhage secondary to multiple gunshot wounds.[11] Dr. Madriaga's autopsy report reveals the following findings:

"EXTERNAL FINDINGS:

- gunshot wound, entrance, 0.7 cm, oval, posterior axillary line at the line of the 7th intercostal space (R) no blackening
- gunshot wound, entrance, 0.7 cm, oval, (R) scapular area, no blackening
- gunshot wound, entrance, 0.7 cm, oval (R) upper back, no blackening
- gunshot wound, entrance, 0.7 cm, oval (R) upper third of the arm, no blackening
- gunshot wound, exit, 8 cm, sternum area

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[5] TSN, 26 February 2003, pp. 119-120.

[6] *Id.* at 120-121.

[7] *Id.* at 121-122.

[8] *Id.* at 122-123.

[9] TSN, 12 March 2003, pp. 7-13.

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

[11] *Id.* at 14.

– gunshot wound, exit, 11 cm, mid-upper back
– gunshot wound, exit, 13 cm. (R) chest

INTERNAL FINDINGS:

On opening the chest cavity, the heart and the (R) lung were lacerated with multiple blood and blood clots inside.

CAUSE OF DEATH:

Hemorrhage, severe 2nd to Multiple gunshot wounds[12]

As to the funeral expenses incurred by the family of the deceased, both prosecution and the defense stipulated that said family spent ₱43,615.00 for the interment.[13]

The defense, on the other hand, advanced the theory of denial and alibi. To buttress its claim, the defense presented Arturo and the following witnesses: (1) Rolando de la Peña (Rolando), Arturo's brother-in-law, who was allegedly with Arturo when the incident took place; (2) Teodoro Olivares (Teodoro), Arturo's nephew, who also claimed he was with Arturo during the night in question; (3) Lemie Revita (Lemie), Arturo's wife; (4) Police Inspector (P/Insp.) Emelda Besarra Roderos, Forensic Chemist of the Pangasinan Provincial Laboratory, who conducted a paraffin test on Arturo; (5) Senior Police Officer (SPO) 1 Gervacio Villanos, the investigator of the killing incident; and (6) Police Officer 3 (PO3) Ben Perez Bince, the responding police officer.

Arturo denied the accusation against him. He claimed that when the killing of Flordeliza occurred on 23 July 2002, he was in the house of his sister situated in Sitio Bantog, Barangay Rajal, Balungao, Pangasinan, enjoying a drinking spree while waiting for the arrival of his sister from Spain.[14] He alleged he was with the company of his brothers, sister, wife, children and some friends. After getting drunk, he went to sleep only to be awakened by his wife at around 8:30 to 9:00 p.m. as

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[12] Exhibit "A"; records, p. 6.

[13] Records, p. 89.

[14] TSN, 6 January 2004, pp. 8-9.

police officers were looking for him.[15] The same police officers brought him to the municipal jail and detained him. The following morning, he was brought to Urdaneta City where he was subjected to a paraffin test. The test yielded a negative result since there was no gunpowder residue found in his hands.

Witnesses Lemie, Teodoro and Rolando corroborated Arturo's testimony that he was in his sister's house and that they were there the whole time when the incident was supposed to have happened. Lemie further testified that as the finance officer of the Barangay Power Association, she personally knew, through the billing statement, that there was no electricity in the house of the victim during the fateful night.

P/Insp. Emelda Besarra Roderos testified that when she conducted a paraffin test on Arturo, she found that the latter was negative for the presence of gunpowder nitrates.[16]

SPO1 Gervacio Villanos merely testified that he saw Arturo being detained in the municipal jail at around 8:30 p.m of 23 July 2002 and that the latter was brought to Urdaneta City, Pangasinan, for paraffin examination the following day.[17]

PO3 Ben Bince declared in the witness stand that he received a call from a concerned citizen regarding the shooting incident. When he reached the scene, he heard somebody saying that it was Arturo who killed the victim. So he went to the house where Arturo was staying. While on his way, he met a woman who told him that Arturo was inside his sister's house sleeping. Then he invited Arturo to the police station.[18]

In a decision dated 7 November 2005, the RTC found Arturo guilty beyond reasonable doubt of the charge pressed against him.

The dispositive portion of the RTC decision reads:

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[15] *Id.* at 5, 10.

[16] TSN, 16 August 2004, p. 5.

[17] TSN, 5 October 2004, pp. 5-6.

[18] TSN, 23 May 2005, pp. 6-8.

WHEREFORE, the accused Arturo O. Revita is hereby found guilty beyond reasonable doubt of committing the crime of homicide as charged, defined and penalized under Article 249 of the Revised Penal Code. Accordingly, he is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as MINIMUM, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as MAXIMUM; and to pay the heirs of the deceased Flordeliza Caguioa the amount of ₱43,615.00 as actual damages; ₱50,000.00 as indemnity for the death of the victim; and ₱50,000.00 as moral damages.[19]

Arturo appealed the decision to the Court of Appeals. In a decision dated 15 February 2007, the Court of Appeals affirmed *in toto* the decision of the RTC. The judgment provides:

WHEREFORE, the assailed Decision of the Regional Trial Court of Rosales, Pangasinan in Criminal Case No. 4483-R finding appellant guilty of homicide and holding him civilly liable therefore is hereby AFFIRMED.[20]

Hence, the instant case.

Arturo assails the RTC and the Court of Appeal's findings which gave weight and credence to the testimony of witness Bryan. Arturo finds incredible the testimony of Bryan who recounts that he saw the suspect pass by him while displaying his rifle. Arturo opines that it would run counter to human experience that a felon would exhibit his attack weapon before any possible witnesses to his criminal act. He said that criminals would normally hide any crime instrument to avoid being suspected. Arturo is likewise skeptical of Bryan's behavior during the incident. He stresses that if indeed Bryan witnessed what he declared in the witness stand, he would have attempted to prevent the perpetrator from killing his grandmother. Since Bryan did not even try to dissuade the malefactor from carrying out his plan, his testimony is suspect.

At bottom, the question in this case is the credibility of the parties and their witnesses.

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[19] *Rollo,* p. 80.

[20] *Id.* at 102-103.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[21] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[22]

In the instant case, prosecution's main witness, Bryan, steadfastly pointed to Arturo as the person who shot the victim. He testified as follows:

Q: While you were talking with your cousin Manilyn Rangel, what happened if any?

A: When I was talking with my cousin Manilyn Rangel, uncle Arthur Revita arrived. I asked him where he was going but he did not answer me, sir.

x x x x x x x x x

Q Now, where did your uncle Arturo Revita proceed when he arrived?

A: When he saw my grandmother, he went near to her and shot her, sir.

Q: Where was your grandmother coming out when Arturo Revita arrived?

A: She was coming out from inside her house, sir.

Q: And where did your grandmother proceed?

A: She proceeded at the terrace, sir.

Q: You mean to say your grandmother Flordeliza Caguioa was inside her terrace when she was shot by Arturo Revita?

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[21] *People v. Matito*, 468 Phil. 14, 24 (2004).

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

A: Yes, sir.

Q: How far were you from the terrace where your grandmother was shot?

A: 4 to 5 meters away, sir.

x x x x x x x x x

Q: Now about Arturo Revita, how far was he from your grandmother when he shot her?

A: He was near my grandmother, sir, about 2½ meters.

x x x x x x x x x

Q: With what gun did Arturo Revita shot your grandmother?

A: He used baby armalite, sir.

Q: And how many times did Arturo Revita shot your grandmother?

A: Many times, sir.

Q: Was your grandmother hit?

A: Yes, sir.

Q: Did you see her hit by the shooting of Arturo Revita?

A: Yes, sir, when my grandmother fell down.[23]

Bryan vividly saw the incident as it was unfolding because it happened right under his nose. He could not have missed it because the victim and the assailant were just close by. Bryan unmistakably identified Arturo as the assailant because right before the latter fired at the victim, the former was able to see at close range the assailant. In fact, Bryan attempted to talk to the assailant when the two bumped into each other. Also, Bryan observed the angry disposition of Arturo immediately before the shooting spree. Considering these facts, even assuming that the crime scene was not lighted, Bryan could still clearly recognize the assailant since the former knew the latter, and the proximity of the two, which was just a few meters away.

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[23] TSN, 26 February 2003, pp. 4-7.

This Court pored over the records of the case and found that Bryan's candid and straightforward narration of the brutal act perpetrated by Arturo on the night of the incident indubitably deserves credence. It is unbelievable that a 19-year old young barrio boy would concoct a tale surrounding the atrocious killing of his grandmother, and would impute so grave a crime to someone he respected, had it not actually taken place. The defense cannot even come up with a decent imputation that Bryan was impelled by ill motive when he pointed at Arturo as the author of the carnage. This is so because there is no plausible reason why Bryan should testify against Arturo, if the latter has nothing to do with what had happened. This Court has consistently held that where there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or implicate him in a serious offense, the testimony deserves faith and credit.[24] Indeed, as a relative of the victim, Bryan's purpose would be to ensure that the real culprit is punished rather than put the blame on someone who is innocent of the crime.[25] So, also, the Court has repeatedly said that the testimony of a single witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict.[26] In the instant case, Bryan gave a clear and convincing narration of the crime, identifying Arturo as responsible thereof. His lone testimony as an eyewitness, therefore, is sufficient to support a conviction.

Alibi is an inherently weak defense, and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[27] The prosecution witness had categorically identified Arturo as the author of the crime. With the positive identification of Arturo, the defense must demonstrate by positive, clear and satisfactory proof that it was physically impossible for the accused to be at the scene of

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[24] *People v. Continente*, 393 Phil. 367, 400 (2000).

[25] *People v. Carillo*, 388 Phil. 1010, 1023 (2000).

[26] *People v. Camacho*, 411 Phil. 715, 727 (2001).

[27] *People v. Morales*, 311 Phil. 279, 288 (1995).

the crime during its commission.[28] Hence, it is not sufficient that the accused was somewhere else when the crime was committed. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places.[29] In this case, Arturo said that he went to sleep at around 7:30 p.m. of the night in question.[30] Arturo's brother-in-law also claimed that he saw Arturo asleep before 8:00 p.m.[31] His wife also testified that Arturo went to bed a little after 7:00 p.m. of the night.[32] While it may be true that Arturo was asleep before the killing incident took place, there is also a great possibility that Arturo woke up and hurriedly went to the place of the victim and, after killing her, returned to his sister's house at around 8:30 p.m. This thesis gains more significance since Arturo himself admitted that his sister's house is very close to that of the victim, which is only less than 300 meters away. There is, therefore, a huge possibility that Arturo was present at the scene of the crime when it was committed at around 8:00 p.m. of 23 July 2002. Hence, the defense is unsuccessful in demonstrating that it was physically impossible for Arturo to be there at the crime scene or nearby when the killing occurred. Besides, the witnesses who corroborated Arturo's alibi are his close relatives. This Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives, thus:

> One can easily fabricate an alibi and ask friends and relatives to corroborate it. **When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism**.[33] (Emphasis supplied.)

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[28] *People v. Appegu*, 429 Phil. 467, 481 (2002).

[29] *Id*.

[30] TSN, 2 February, pp. 6-7.

[31] TSN, 26 August 2003, p. 11.

[32] TSN, 23 February 2004, p. 6.

[33] *People v. Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).

Arturo is clutching at straws in making an issue out of Bryan's inaction to stop the killing of his grandmother, or at least to help her after she was shot by the assailant. There is no standard form of behavioral response when one is confronted with a strange, startling, frightful or traumatic experience — some may shout, some may faint, and some may be shocked into insensibility.[34] Different people act differently to a given stimulus or type of situation.[35] Bryan's flight from the scene is understandable considering that the harrowing sight he just witnessed was beyond his young mind to take. It is also natural for him to scurry away from the place to avoid incurring the wrath of the assailant. Moreover, Bryan failed to prevent Arturo from killing his grandmother simply because he did not expect that the latter would shoot the victim. Also, Arturo, who was armed with a high-powered rifle, would be too enormous a force to be stalled by the young fellow.

Arturo claims that Bryan's testimony is unrealistic since it is not in accord with human experience to kill someone in the presence of prying eyes and that at the very least the weapon used should be concealed from the witnesses. This argument is unavailing. This Court observed that there is no standard behavior of criminals before, during, and after the commission of a crime.[36] Some may be so bold and daring at the point of recklessness in committing a crime in broad daylight in full view of bystanders, would-be witnesses and even before the very eyes of the victim's relatives.[37] Others may be so cunning such that they commit crime in the darkness of the night to avoid detection and arrest by peace officers.[38] In the case under consideration, it is not remote that Arturo — who was intoxicated — may have been emboldened by his condition to the point of displaying his weapon to the relatives of the victim and executed the victim in the presence of the victim's relatives.

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[34] *People v. Castillo, supra* note 22.

[35] *Id*.

[36] *People v. Garcia,* 447 Phil. 244, 260 (2003).

[37] *Id*.

[38] *Id*.

Arturo insists that his conviction is tainted by reasonable doubt since the paraffin test conducted on him resulted negative. Suffice it to state that even negative findings of the paraffin test do not conclusively show that a person did not fire a gun. A paraffin test has been held to be highly unreliable. The Court thus once held:

> Scientific experts concur in the view that the paraffin test has "x x x proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, *viz*: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the direction of a strong wind is against the gunman at the time of firing. x x x.[39]

In fine, this Court defers to the findings of the trial court which are affirmed by the Court of Appeals, there being no cogent reason to veer away from such findings.

Under Article 249 of the Revised Penal Code, the applicable penalty for homicide is *reclusion temporal*. There being no mitigating or aggravating circumstance alleged and proven in the case at bar, the penalty should be applied in its medium period pursuant to Article 64(1) of the Revised Penal Code, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of *prision mayor* in any of its periods as minimum to *reclusion temporal* in its medium period as the maximum.

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[39] *People v. Teehankee, Jr.*, G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 54, 103.

The range of *prision mayor* is from 6 years and 1 day to 12 years, while *reclusion temporal* in its medium period, ranges from 14 years, 8 months and 1 day to 17 years and 4 months. The RTC imposed on Arturo the indeterminate penalty of six years and one day of *prision mayor* as minimum to 14 years, eight months and one day of *reclusion temporal*, as maximum. Therefore, the penalty imposed by the RTC is in order.

Also affirmed is the award of damages by the RTC. The actual damages in the amount of ₱43,615.00 for funeral expenses is stipulated upon by the parties. It should be maintained. The award of ₱50,000.00 for civil indemnity and another ₱50,000.00 for moral damages is likewise in accord with latest jurisprudence.[40]

WHEREFORE, the Decision of the Court of Appeals dated 15 February 2007 which affirmed the 7 November 2005 Decision of the Regional Trial Court of Rosales, Pangasinan, Branch 53, finding Arturo O. Revita *GUILTY* of the crime of Homicide, is hereby *AFFIRMED in toto*.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Tinga,*[**] and *Velasco, Jr.,*[**] *JJ.,* concur.

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[40] *Licyayo v. People*, G.R. No. 169425, 4 March 2008, 547 SCRA 598, 614.

* Per Special Order No. 531, dated 20 October 2008, signed by Acting Chief Justice Leonardo A. Quisumbing, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on leave.

** Justices Dante O. Tinga and Presbitero J. Velasco, Jr. were designated to sit as additional members replacing Justices Antonio Eduardo B. Nachura and Ruben T. Reyes per Raffle dated 19 November 2007.

SECOND DIVISION

[G.R. No. 177647. October 31, 2008]

U-BIX CORPORATION and EDILBERTO B. BRAVO, *petitioners, vs.* **VALERIE ANNE H. HOLLERO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL; BURDEN OF PROOF ON EMPLOYER. — In termination cases, the employer has the burden of proving that the dismissal is for a valid and just cause. While an employer enjoys a wider latitude of discretion in terminating the employment of managerial employees, managerial employees are also entitled to security of tenure and cannot be arbitrarily dismissed at any time and without cause as reasonably established in an appropriate investigation.

2. ID.; ID.; ID.; ID.; PETITIONER DID NOT DISCHARGE BURDEN IN CASE AT BAR. — In the case at bar, petitioners failed to substantiate their allegations of respondent's habitual absenteeism, habitual tardiness, neglect of duties, and lack of interest. Daily time records, attendance records, or other documentary evidence attesting to these grounds could have readily been presented to support the allegations but none was. On the other hand, copies of respondent's Pay Advice Slips for September-December 1996 show no deductions for absences or tardiness, except in the Pay Advice Slip for October 1-15, 1996 which deductions correspond to a duly approved leave of absence without pay from September 23-24, 1996 (subject of petitioner's applications filed on September 21, 1996). A receipt acknowledging the turnover of keys on December 23, 1996 submitted by respondent substantiates her account of the meeting that took place when she reported back for work on that day, which document belies petitioners' claim that she abandoned her work and that "[o]n the evening of December 23, 1997, Mr. Bill Malfitano, one of respondent's superiors, went out of his way to deliver to the respondent a letter requesting for a written explanation as to her errant acts."

Malfitano's memorandum to respondent dated December 12, 1996, or close to two weeks before she was asked on December 23, 1996 to turn over the keys, stating that her "leadership role in this implementation is critical to our success in meeting our customers' needs" and she had "been introduced as the FMI manager responsible for our program implementation to the site coordinator at each of the U-Bix facilities," belies U-Bix's allegations of her habitual absenteeism, habitual tardiness, neglect of duty, and lack of interest.

3. ID.; ID.; ID.; ID.; ABSENCES MUST BE HABITUAL TO BE A GROUND FOR DISMISSAL. — Assuming *arguendo* that respondent's four-day absence was not justified, absences must be habitual to be a ground for dismissal. At all events, granting that petitioners' following contention is in order, *viz*: In this day where over-the–counter medicines abound for common ailments such as loose bowel movement, Hollero's story of unabated LBM to cause her to be absent for 4 consecutive days starting December 18 to December 21,1996 is simply incredible. Wors[e], in this day and age of high technology and modern telecommunication facilities in Metro Manila, Hollero's pitiful story that she had no other means of communicating with petitioner U-Bix except thru her neighbor's busted phone is even more incredible. These bespeak of an unresourceful and indifferent manager. It breaks one's credibility to believe that respondent Hollero was suffering for 4 consecutive days from unrelenting LBM such that she could not even request somebody to call her employer U-Bix of her predicament. x x x there must be reasonable proportionality between the offense and the penalty. Dismissal is the ultimate penalty that can be meted to an employee, and where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with so severe a consequence. Thus in *Zagala v. Mikado Philippines Corporation*, this Court found dismissal too severe a penalty on incurring of absences in excess of the allowable number.

4. ID.; ID.; ID.; ID.; PROCEDURAL REQUIREMENTS FOR A VALID DISMISSAL, CASE AT BAR. — In another vein, the Court finds that petitioners failed to comply with the procedural requirements for a valid dismissal. Respondent being a manager did not excuse them from observing such procedural requirements. Thus a first notice informing and bearing on the charge must

be sent to the employee. The December 23, 1996 memorandum of Malfitano which he handcarried to respondent's residence on even date merely reads: I am requesting that you send me a written explanation which satisfactorily addresses the two days you abandoned your management position without a call or any contact with the Service MASTER team or anyone within the U-Bix Organization. The two days I am referring to are Wednesday, December 18, 1996 and Thursday, December 19, 1996. I am requesting that you respond in writing by 5 pm on Tuesday, December 24, 1996. If we do not receive a response within the time allotted we will have to consider this as waiving your right to provide any further explanation relating to this absence. The notice does not inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to her dismissal. It does not contain a plain statement of the charges of malfeasance or misfeasance nor categorically state the effect on her employment if the charges are proven to be true. It does not apprise respondent of possible dismissal should her explanation prove unsatisfactory. Besides, the petitioners did not even establish that respondent received the memorandum. Neither did petitioners show that they conducted a hearing or conference during which respondent, with the assistance of counsel if she so desired, had opportunity to respond to the charge, present her evidence, or rebut the evidence presented against her. The meeting with respondent on December 23, 1996 did not satisfy the hearing requirement, for respondent was not given the opportunity to avail herself of counsel.

5. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DETERMINED FROM ALLEGATIONS MADE IN THE COMPLAINT; CASE AT BAR. — The legality of respondent's dismissal was, however, raised not by U-Bix's complaint but in respondent's Position Paper. Jurisdiction over the subject matter is determined from the allegations made in the complaint, and cannot be made to depend upon the defenses made by a defendant in his Answer or Motion to Dismiss. The jurisdiction of labor arbiters, as well as of the NLRC, is limited to disputes arising from an employer-employee relationship which can only be resolved by reference to the Labor Code, other labor statutes, or their collective bargaining agreement. U-Bix's complaint was one to collect sum of money based on civil laws — on obligations and contract, not to enforce rights under the Labor Code, other labor statutes, or the collective bargaining agreement.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioners.
Abejo & Partners Law Offices for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner U-Bix Corporation (U-Bix) hired on March 6, 1996 Valerie Anne H. Hollero (respondent) as a management trainee at its Furniture Division, with salary and allowances totaling ₱10,000 monthly. On May 1, 1996, it promoted respondent to facilities manager, with salary and allowances totaling ₱20,000 monthly.

U-Bix later sent respondent and three other employees to the United States for two months of training for a newly acquired franchise, the ServiceMaster Company. The training commenced on July 4, 1996 and ended on September 3, 1996.

Before respondent left for the United States, she signed a contract with petitioner, the pertinent portion of which reads:

> VALERIE ANNE H. HOLLERO shall remain in the employ of U-BIX CORPORATION for a period of five (5) years from completion of her U.S. Training *otherwise* she shall reimburse U-BIX CORPORATION for all costs (prorated) and expenses which U-BIX CORPORATION incurred for her (Hollero's) training in the U.S.[1] (Underscoring and italics supplied)

On February 14, 1997, U-Bix, citing respondent's supposed "pattern of tardiness, absences, neglect of duties, and lack of interest,"[2] terminated her employment for loss of trust and confidence.[3]

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[1] NLRC records, p. 153.

[2] *Id.* at 94-95.

[3] *Ibid.*

U-Bix in fact filed on May 22, 1997 a complaint[4] against respondent before the Labor Arbiter for the reimbursement of training expenses and damages. In its complaint, which was docketed as NLRC NCR Case No. 00-05-03696-97, U-Bix alleged that upon respondent's return from her training abroad, she demonstrated gross neglect of her duties as shown by her continued tardiness, habitual absences, and failure to submit reports and/or documents on their due dates, attention to which was repeatedly called but she persisted in such conduct; that on December 17, 1996, respondent's superiors discussed with her the duties and responsibilities of a facilities manager and the work performance standards expected of her, following which or on December 18 and 19, 1996, she did not report for work without prior notice; that on December 23, 1996, respondent's superior Bill Malfitano (Malfitano) handcarried to her residence a memorandum requiring her to explain in writing her unauthorized absences, with a warning that failure to respond within 24 hours from receipt thereof would be considered a waiver of her right to give her explanation; that respondent, however, failed and refused to submit any explanation, constraining U-Bix to terminate her employment; and that on April 24, 1997, U-Bix's counsel wrote respondent a letter[5] demanding the reimbursement of ₱187,510 training expenses but the same remained unheeded.

Subsequently or on August 25, 1997, respondent filed a complaint for illegal dismissal against petitioner U-Bix and/or its President-petitioner Edilberto B. Bravo.[6] Her complaint, which was docketed as NLRC-NCR Case No. 00-08-05988-97, alleged as follows:

After her training abroad, she and her three other co-employees-trainees and an American manager who was assigned to the Philippines as part of the franchise agreement "started the set-up of the new franchise in the country." She organized the launching of U-Bix's subsidiary company (Facilities Managers,

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[4] *Id.* at 2-9.

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

[6] *Id.* at 285.

Inc.), trained personnel on ServiceMaster methods of cleaning and customer service, and distributed chemicals and equipment from the United States to the various U-Bix branches upon Malfitano's advice and guidance. And during the second week of December 1996, she headed the cleaning personnel in cleaning the production plant in Sucat, Parañaque which lasted up to midnight for three days.

Respondent who was made to understand that she was the contact person of U-Bix and the head of the implementation team, was furnished a copy of her job description.[7]

On December 17, 1996, Malfitano met with the implementation team and discussed the various roles of each member thereof, since setting up stage was about to end and the duties and responsibilities of each member were being streamlined.

From December 18-19, 1996, respondent suffered from loose bowel movement, preventing her from reporting for work. She, however, failed to notify the company of her absence.

On the second day of her absence or on December 19, 1996, Malfitano visited her during which she explained to him that she had no way to communicate with the office except by telephone but that her neighbor's telephone was out of order. When she reported back for work on December 23, 1996, she was asked to explain why she did not advise the company of her failure to report for work on December 18 and 19, 1996. She reiterated her explanation given to Malfitano, apologizing for the inconvenience her absence caused the office.

On the same day that she reported for work on December 23, 1996, Malfitano advised her that he was recommending the termination of her services and asked her to, as she did, turn over her files and office keys. And he advised her not to report for work until further notice. She complied[8] and did not receive any word from U-Bix until the first week of March 1997 when she received a letter informing her of her dismissal effective February 14, 1997.

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[7] *Id.* at 155-156.

[8] *Id.* at 157.

NLRC-NCR Case No. 00-05-03696-97 and NLRC-NCR Case No. 00-08-05988-97 were consolidated.[9]

By Decision of February 8, 1999, Labor Arbiter Donato G. Quinto, Jr., found for U-Bix, disposing as follows:[10]

> WHEREFORE, judgment is hereby rendered as follows:
>
> A. in NLRC-NCR Case No. 00-05-03696-97
>
> 1. Declaring the dismissal of respondent Valerie Anne H. Hollero to be valid and legal, and
>
> 2. Ordering said respondent Valerie Anne H. Hollero to pay complainant U-Bix Corporation the amount of ₱187,510.00 with interest at 12% per annum, until fully paid, as discussed above.
>
> B. in NLRC NCR Case No. 00-08-05988-97 —
>
> 1. Dismissing complainant Valerie Anne H. Hollero's complaint for illegal dismissal and money claims for lack of merit.[11] (Underscoring supplied)

On appeal before the National Labor Relations Commission (NLRC) (docketed as NLRC NCR CA No. 018999-99),[12] the NLRC reversed the Labor Arbiter's decision. Finding that reinstatement was not feasible due to strained relations,[13] it awarded respondent backwages and separation pay. Thus it disposed:

> WHEREFORE, premises considered, the assailed decision dated February 8, 1999 is hereby REVERSED and SET ASIDE and a new one entered as follows:
>
> A. Dismissing the complaint of the respondent-appellee U-BIX CORPORATION, in NLRC NCR Case No. 00-05-03696-97 for lack of jurisdiction; and,

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[9] *Id.* at 287-289.

[10] *Id.* at 291-306.

[11] *Id.* at 305-306.

[12] *Id.* at 464.

[13] *Id.* at 483. *Vide* at 350.

B. Finding the dismissal of complainant-appellant Valerie Anne H. Hollero in NLRC NCR Case No. 00-08-05988-97 to be illegal thereby ordering respondents-appellees U-BIX CORPORATION/ Edilberto B. Bravo to pay the former the following:

1.	Backwages	₱520,000.00
2.	Separation Pay	60,000.00; and
	Total	₱580,000.00

All other claims for damages are dismissed for insufficiency of evidence.[14] (Underscoring supplied)

Petitioners' Motion for Reconsideration[15] having been denied by the NLRC, they filed a Petition for *Certiorari* (with application for issuance of temporary restraining order and/or writ of preliminary injunction)[16] before the Court of Appeals which, by Decision[17] of January 8, 2007, dismissed the same, disposing as follows:

WHEREFORE, the petition is **DISMISSED.** The assailed NLRC Resolutions dated July 12, 1999 and March 14, 2000 in NLRC NCR CA No. 018999-99 are hereby **AFFIRMED** with the clarification that NLRC-NCR Case No. 00-05-03696-97 is dismissed for lack of merit instead of lack of jurisdiction.

SO ORDERED.[18] (Emphasis in the original)

Their Motion for Reconsideration[19] having been denied,[20] petitioners filed the present Petition for Review on *Certiorari*,[21] faulting the Court of Appeals

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[14] *Id.* at 484.

[15] *Id.* at 486-508.

[16] CA *rollo*, pp. 2-46.

[17] Penned by Court of Appeals Associate Justice Estela M. Perlas-Bernabe, with the concurrence of Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin. *Id.* at 421-429.

[18] *Id.* at 429.

[19] *Id.* at 437-446.

[20] *Id.* at 466.

[21] *Rollo*, pp. 23-55.

I

x x x IN HOLDING THAT PETITIONERS FAILED TO ESTABLISH A VALID CAUSE FOR RESPONDENT HOLLERO'S DISMISSAL.

II

x x x IN RULING THAT PETITIONER U-BIX FAILED TO OBSERVE THE PROCEDURAL REQUIREMENTS OF DUE PROCESS IN TERMINATING RESPONDENT HOLLERO.

III

x x x IN RULING THAT PETITIONER U-BIX IS NOT ENTITLED TO REIMBURSEMENT OF RESPONDENT HOLLERO'S TRAINING EXPENSES.[22]

In termination cases, the employer has the burden of proving that the dismissal is for a valid and just cause.[23] While an employer enjoys a wider latitude of discretion in terminating the employment of managerial employees,[24] managerial employees are also entitled to security of tenure and cannot be arbitrarily dismissed at any time and without cause as reasonably established in an appropriate investigation.[25]

In the case at bar, petitioners failed to substantiate their allegations of respondent's habitual absenteeism, habitual tardiness, neglect of duties, and lack of interest. Daily time records, attendance records, or other documentary evidence attesting to these grounds could have readily been presented to support the allegations but none was.

On the other hand, copies of respondent's Pay Advice Slips for September-December 1996 show no deductions for absences or tardiness, except in the Pay Advice Slip for October 1-15,

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[22] *Id.* at 37-38.

[23] Vide *Philippine Long Distance Telephone Company, Inc. v. Balbastro*, G.R. No. 157202, March 28, 2007, 519 SCRA 233, 243; *Skippers Pacific, Inc. v. Shipper Maritime Service, Ltd.*, 440 Phil. 906, 917-918 (2002) (citations omitted).

[24] Vide *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 892-893 (2003).

[25] Vide *Philippine Transmarine Carriers Inc., v. Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 597-598.

1996 which deductions correspond to a duly approved leave of absence without pay from September 23-24, 1996 (subject of petitioner's application filed on September 21, 1996).[26]

A receipt acknowledging the turnover of keys on December 23, 1996[27] submitted by respondent substantiates her account of the meeting that took place when she reported back for work on that day, which document belies petitioners' claim that she abandoned her work and that "[o]n the evening of December 23, 1997, Mr. Bill Malfitano, one of respondent's superiors, went out of his way to deliver to the respondent a letter requesting for a written explanation as to her errant acts."[28]

Malfitano's memorandum to respondent dated December 12, 1996, or close to two weeks before she was asked on December 23, 1996 to turn over the keys, stating that her "leadership role in this implementation is critical to our success in meeting our customers' needs"[29] and she had "been introduced as the FMI manager responsible for our program implementation to the site coordinator at each of the U-Bix facilities,"[30] belies U-Bix's allegations of her habitual absenteeism, habitual tardiness, neglect of duty, and lack of interest.

Petitioners go on to lay stress on respondent's failure to report for work on December 18-21, 1996 without notifying the office and without explaining her absence when she returned for work.[31]

As the Court of Appeals observed, however,

> Records likewise reveal that U-Bix failed to adduce evidence showing that Mr. Malfitano denied or corroborated [herein respondent] Valerie's claim that he had visited her on the evening of December 19, 1996 and *accepted the explanation for her absence*. While its

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[26] *Vide* NLRC records, pp. 226-232.

[27] *Id.* at 93.

[28] *Id.* at 238.

[29] *Id.* at 155.

[30] *Ibid.*

[31] *Rollo*, pp. 36, 40-41.

pleadings below were silent on the matter, U-Bix admits *now* that Mr. Malfitano went to Valerie's house on said date[32] but skirted the issue of whether or not he had accepted her explanation. That despite Valerie's absences from December 18 to 21, 1996 U-Bix only *made issue* of her absences on December 18 and 19, indicates that her condition had already come to the latter's knowledge thereafter, thereby excusing her absences on December 20 and 21. Thus, while the Court finds it thoughtless of Valerie not to have exerted diligent efforts to inform the office of the reason for her absence at the earliest time possible, it, however, believes in her claim that she informed Mr. Malfitano about it and that the latter had accepted her explanation. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[33] (Italics in the original; underscoring supplied)

Assuming *arguendo* that respondent's four-day absence was not justified, absences must be habitual to be a ground for dismissal.[34] At all events, granting that petitioners' following contention is in order, *viz*:

In this day where over-the-counter medicines abound for common ailments such as loose bowel movement, Hollero's story of unabated LBM to cause her to be absent for 4 consecutive days starting December 18 to December 21, 1996 is simply incredible. Wors[e], in this day and age of high technology and modern telecommunication facilities in Metro Manila, Hollero's pitiful story that she had no other means of communicating with petitioner U-Bix except thru her neighbor's busted phone is even more incredible.

These bespeak of an unresourceful and indifferent manager. It breaks one's credibility to believe that respondent Hollero was suffering for 4 consecutive days from unrelenting LBM such that she could not even request somebody to call her employer U-Bix of her predicament. x x x[35] (Underscoring supplied),

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[32] *Vide* CA *rollo*, pp. 36-37.

[33] *Id.* at 427.

[34] *Vide* LABOR CODE, Article 282 (b); *Acebedo Optical v. National Labor Relations Commission*, G.R. No. 150171, July 17, 2007, 527 SCRA 655, 675.

[35] *Rollo*, p. 40.

there must be reasonable proportionality between the offense and the penalty.[36] Dismissal is the ultimate penalty that can be meted to an employee, and where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with so severe consequence.[37] Thus in *Zagala v. Mikado Philippines Corporation*,[38] this Court found dismissal too severe a penalty on incurring of absences in excess of the allowable number.

Further, petitioners take respondent's failure to pray for reinstatement as an admission that her dismissal was valid.[39] Such position glosses over respondent's explanation that reinstatement would not be feasible due to the strained relations between her and petitioners.[40] Besides, the merits of a complaint for illegal dismissal do not depend on its prayer but on whether the employer discharges its burden of proving that the dismissal is valid.

In another vein, the Court finds that petitioners failed to comply with the procedural requirements for a valid dismissal. Respondent being a manager did not excuse them from observing such procedural requirements.

Thus a first notice informing and bearing on the charge must be sent to the employee. The December 23, 1996 memorandum of Malfitano which he handcarried to respondent's residence on even date merely reads:

> I am requesting that you send me a written explanation which satisfactorily addresses the two days you abandoned your management position without a call or any contact with the ServiceMASTER team or anyone within the U-Bix Organization.

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[36] *Zagala v. Mikado Philippines Corporation,* G.R. No. 160863, September 27, 2006, 503 SCRA 581, 590.

[37] *Vide* at 590-591.

[38] *Id.* at 583, 592.

[39] *Rollo,* pp. 44-45.

[40] NLRC records, p. 350.

The two days I am referring to are Wednesday, December 18, 1996 and Thursday, December 19, 1996.

I am requesting that you respond in writing by 5 pm on Tuesday, December 24, 1996. If we do not receive a response within the time allotted we will have to consider this as waiving your right to provide any further explanation relating to this absence.[41]

The notice does not inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to her dismissal. It does not contain a plain statement of the charges of malfeasance or misfeasance nor categorically state the effect on her employment if the charges are proven to be true.[42] It does not apprise respondent of possible dismissal should her explanation prove unsatisfactory. Besides, the petitioners did not even establish that respondent received the memorandum.

Neither did petitioners show that they conducted a hearing or conference during which respondent, with the assistance of counsel if she so desired, had opportunity to respond to the charge, present her evidence, or rebut the evidence presented against her.[43] The meeting with respondent on December 23, 1996 did not satisfy the hearing requirement, for respondent was not given the opportunity to avail herself of counsel.

Article 277(b) of the Labor Code mandates that an employer who seeks to dismiss an employee must "afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Expounding on this provision, this Court held that "'[a]mple opportunity' connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation."[44]

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[41] *Id.* at 96.

[42] Vide *Maquiling v. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384, February 4, 2005, 450 SCRA 465, 477.

[43] Vide RULES IMPLEMENTING BOOK VI, Rule I, Section 2.

[44] *Mañebo v. National Labor Relations Commission*, G.R. No. 107721, January 10, 1994, 229 SCRA 240, 251.

With regard to U-Bix's complaint for reimbursement of training expenses, the Court finds that the Court of Appeals erred in holding that the Labor Arbiter has jurisdiction thereover. Consider the reason proffered for such ruling:

> x x x In the instant case, while the principal relief prayed for is the reimbursement of damages for breach of a contractual obligation, the issue of whether or not Valerie should be held liable therefor necessarily includes the determination of the validity of her termination which can *only* be resolved by reference to, and application of, labor laws and jurisprudence. Thus, since the alleged breach of the Agreement is so closely intertwined with the issue of illegal dismissal, the resolution of both issues falls within the area of competence or expertise of the labor arbiters and the NLRC.[45] (Italics in the original)

The legality of respondent's dismissal was, however, raised not by U-Bix's complaint but in respondent's Position Paper.[46] Jurisdiction over the subject matter is determined from the allegations made in the complaint, and cannot be made to depend upon the defenses made by a defendant in his Answer or Motion to Dismiss.[47] The jurisdiction of labor arbiters, as well as of the NLRC, is limited to disputes arising from an employer-employee relationship which can only be resolved by reference to the Labor Code, other labor statutes, or their collective bargaining agreement.[48] U-Bix's complaint was one to collect sum of money based on civil laws — on obligations and contract, not to enforce rights under the Labor Code, other labor statutes, or the collective bargaining agreement.

WHEREFORE, the January 8, 2007 Decision of the Court of Appeals is *AFFIRMED with MODIFICATION* in the NLRC-NCR Case No. 00-05-03696-97 is dismissed, not lack of merit but, for lack of jurisdiction.

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[45] *CA rollo,* p. 426.

[46] *Vide* NLRC records, pp. 2-9, 74-85.

[47] *Vide Yusen Air and Sea Service Philippines, Inc. v. Villamor,* G.R. No. 154060, August 16, 2005, 467 SCRA 167, 175 (citations omitted).

[48] *George Grotjahn GMBH & Co. v. Isnani,* G.R. No. 109272, August 10, 1994, 235 SCRA 216, 221.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178271. October 31, 2008]

BANCO DE ORO-EPCI, INC. (formerly known as EQUITABLE PCI BANK INC.),* *petitioner, vs.* **HON. ZENAIDA R. DAGUNA, in her capacity as Presiding Judge, Regional Trial Court of Manila, Br. 19, and PHILIPPINE DEVELOPMENT AND INDUSTRIAL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSES OF ACTION; TEST OF IDENTITY OF CAUSES OF ACTION; CASE AT BAR. — The test of identity of causes of action lies on whether the **same evidence** would support and establish the former and present causes of action. If the same body of evidence would sustain both actions, the two actions unmistakably descend from the same cause of action. While the *Second Amended* Complaint pending before the Makati RTC and the Complaint pending before the Manila RTC have significantly similar factual antecedents, the causes of action proceed from different grounds calling for different bodies of evidence to support the parties' respective positions in each action. Thus, the Makati RTC *Amended* Complaint sought the **release** of the mortgage over the same condominium units

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* Equitable PCI Bank, Inc. merged with Banco De Oro Universal Bank forming a new entity, Banco De Oro-EPCI, Inc.

and damages brought about by petitioner's alleged failure to provide funds under the secured credit line. The Manila RTC complaint sought the **annulment** of the mortgage constituted over the 29 condominium units and the foreclosure sale on the basis of alleged flaws and irregularities attendant to it. The Manila RTC Complaint would thus have to rely on specific instances of supposed vitiated consent, fraud, lack of consideration and irregularities in the foreclosure sale, while the Makati RTC action would have to specifically dwell on evidence relating to the willful refusal of petitioner to release funds in the secured credit line and the losses incurred thereby by respondent.

2. ID.; ID.; ID.; ACTION FOR RELEASE OF MORTGAGE; PERSONAL ACTION PRIOR TO FORECLOSURE SALE. — Prior to foreclosure sale, an action for the release of the mortgage is a personal action, following the doctrine laid down in *Hernandez v. Rural Bank of Lucena*, possession and ownership over the properties subject of the mortgage having remained with, in this case respondent-mortgagor. Since petitioner had, in the interregnum, foreclosed the mortgage, respondent had to withdraw its action for release of mortgage and file the appropriate action for annulment of the foreclosure in the proper venue, which is Manila where the mortgaged properties are located.

3. ID.; ID.; ID.; CAUSES OF ACTION; SPLITTING A CAUSE OF ACTION, CONSTRUED. — While respondent did not ask for damages in its Manila RTC action despite allegations of losses and damages that it suffered, this should not be taken to mean that it split its cause of action, venues of the two actions having been properly laid. Splitting a cause of action is the act of dividing a single cause of action, claim or demand into two or more parts, and bringing suit for one of such parts only, intending to reserve the rest for another separate action.

APPEARANCES OF COUNSEL

Sumalpong Matibag Magturo Banzon Buenaventura & Yusi for petitioner.

Rogelio M. Tiempo for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed in the present petition for review on *certiorari* are two issuances of the Manila Regional Trial Court (RTC), Branch 19 in Civil Case No. 03-106886: Order of September 5, 2003[1] which denied petitioner's motion to dismiss, and Order of June 22, 2005[2] which denied the motion for reconsideration thereof.

In 1996, PCI Bank, Inc. (PCIB) approved the credit line application of Philippine Development and Industrial Corporation (respondent) consisting of secured and clean lines to fund the latter's townhouse project in Sta. Ana, Manila. As collateral for its secured line, respondent executed a real estate mortgage over the mother title of its townhouse project.[3]

Defaulting, however, in the payment of its obligations, respondent executed a Repayment Agreement[4] wherein it secured all its obligations with real estate mortgages (REMs) over twenty nine (29) condominium units, and a titled real estate property located in Meycauayan, Bulacan. Again, respondent failed to meet its obligations under the repayment arrangement, compelling PCIB, which merged with Equitable Bank to form Equitable PCIBank (EPCIB), to initiate foreclosure proceedings before the RTC of Manila.

Respondent conversely filed a complaint on April 11, 2003 against EPCIB for "Cancellation of Mortgage, Restitution of Titles and Damages" before the Makati RTC, docketed as Civil Case No. 03-401. On even date, respondent filed an *Amended* Complaint[5] modifying its complaint into one for "Release of Mortgage and Damages."

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[1] II Records, pp. 57-59.

[2] *Id.* at 97-98.

[3] Annex "C", CA *rollo,* p. 180.

[4] Annex "A", *rollo,* pp. 169-175.

[5] *Id.* at 190-209.

By Order of April 15, 2003, the Makati RTC Branch 63 dismissed the *Amended* Complaint without prejudice, for "lack of jurisdiction (*sic*)" "after a finding that the principal cause of action is for annulment (*sic*) of real estate mortgage contracted in the City of Manila over a real property located in Sta. Ana, Manila . . . ," the action being one *in rem*.[6] Respondent moved to have the order of dismissal reconsidered. Later manifesting that EPCIB had already foreclosed its mortgages, it moved to withdraw its *Amended* Complaint for "**Release** of Mortgage," to thus limit its cause of action to one for **"Damages"** which was made the subject of its *Second Amended* Complaint,[7] which it also moved to be admitted.[8]

Without awaiting the resolution by the Makati RTC of the foregoing incidents, respondent filed on June 16, 2003 before the Manila RTC a complaint for **"Annulment** of Mortgage and the Foreclosure Sale with Application for TRO and Preliminary Injunction" against EPCIB, the Manila Register of Deeds, and Manila RTC Sheriff Amor Dait.[9] The Verification/Certification accomplished by respondent's representative stated that:

> 4. I, or the corporation that I represent, have not commenced any other action or proceeding involving the same issues in the Court of Appeals, Regional Trial Courts, or any other tribunal or agency, **except an action for *Damages* which is presently pending with the Regional Trial Court of Makati, Branch 63, and docketed therein as Civil Case No. 03-401 entitled "*Philippine Development [and] Industrial Corporation v. Equitable PCI Bank.*" The said case involves a separate and distinct cause of action and thus involves a different issue**;[10] (Emphasis, italics and underscoring supplied)

EPCIB moved for the dismissal of respondent's complaint lodged in the Manila RTC, contending that, *inter alia*, respondent

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[6] CA *rollo*, Annex "J", p. 101.

[7] *Rollo*, pp. 210-226.

[8] *Vide:* Urgent Manifestation dated May 28, 2003, I Records, pp. 299-303.

[9] *Rollo*, pp. 227-243.

[10] CA *rollo*, p. 149.

is guilty of forum shopping,[11] and that respondent's Verification/ Certification therein is false, if not defective, since what was filed before the Makati RTC was an action for "Release of Mortgage and Damages," a complaint similar to the one pending before the Manila RTC — for Annulment of Mortgage and Foreclosure Sale.

Branch 19 of the Manila RTC, in its first assailed order, denied petitioner's motion to dismiss on the ground that the case pending before it is "an action for annulment of mortgage while the [other] is one for damages."[12] The other assailed order denied petitioner's motion for reconsideration.

In the meantime, the Makati RTC, by Order[13] of June 9, 2004, granted respondent's motion to withdraw its action for "Release of Mortgage" admitted respondent's *Second Amended* Complaint for "Damages."

Respondent's *Second Amended* Complaint for "Damages" is predicated on the alleged malicious refusal of petitioner to release funds under the secured credit line, despite the fact that it (respondent) had put up sufficient collateral.[14]

Via *certiorari*, EPCIB brought the case to the Court of Appeals which sustained the decision of the Manila RTC by Decision of June 6, 2007.[15]

Hence, the present petition of EPCIB, which has, after its merger with Banco de Oro, became known as Banco de Oro-EPCI, Inc. (hereafter petitioner), which raises the sole issue of whether respondent resorted to forum shopping.

The Court holds in the negative.

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[11] *Id.* at 154-166.

[12] *Supra* note 1.

[13] *Rollo*, pp. 247-249.

[14] *Id.* at 264.

[15] *Id.* at 141-159. Penned by Associate Justice Normande B. Pizarro with the concurrence of Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

It bears noting that respondent filed its complaint at the Manila RTC on June 16, 2003, **before** the issuance of the June 9, 2004 Order by the Makati RTC resolving respondent's Motion for Reconsideration of its Order dismissing respondent's *Amended* Complaint by reinstating respondent's complaint for "Damages" subject of respondent's *Second Amended* Complaint.

In other words, at the time respondent filed its complaint before the Manila RTC, the reinstatement of its complaint for "Damages" which was to become the subject of its *Second Amended* Complaint was still pending consideration by the Makati RTC.

As did the Manila RTC, the appellate court relied on respondent's statement in its Certification of Non-Forum Shopping about the pendency of an action for Damages. Thus the appellate court observed:

> **The cause of action and the relief sought in its complaint before the RTC of Makati is limited to a claim for damages, an action *in personam***, against the [petitioner] for unjustly refusing to turn over to the former the questioned certificates of title covering the condominium units, subject of the controversy. **In contrast, the complaint lodged before the RTC of Manila, an action *in rem*[,] is for the annulment of the real estate mortgage** (REM), constituted over the condominium units, subject of the controversy, based on PDIC's vitiated consent. (Emphasis and underscoring supplied)

The statement of respondent was not exactly accurate because at the time the Certification of Non-Forum Shopping segment of respondent's complaint before the Manila RTC was accomplished, the reinstatement of its action for damages was still pending by the Makati RTC. At any rate, the Makati RTC eventually reinstated such action for "Damages."

A reading of the Complaint before the Manila RTC and the *Amended* Complaint and *Second Amended* Complaint before the Makati RTC shows that these pleadings allege the same factual circumstances as bases for the reliefs respectively prayed for. Thus, the Manila RTC complaint for "Annulment of Mortgage and Foreclosure Sale" reads:

2.1 x x x.

x x x x x x x x x

2.8 **On or about January 1997, PDIC tried to draw on the secured credit line and requested the Bank to release funds therefrom as the clean line was already fully utilized. The additional drawdown was needed to complete the construction of the Project. Unfortunately, the Bank, without any justification or explanation, refused to release any amount in favor of PDIC from the PhP100.0M Secured Credit Line. This unjustified refusal of the Bank to release an amount which it earlier committed to grant PDIC, resulted in the delay in the construction as PDIC could not pay the progress billings of the contractor.**

2.9 Subsequently, PDIC requested the Bank for the release of Pesos: Forty Five Million (PhP45.0M), an amount which was then sufficient to complete the Project, from the PhP100M Secured Credit Line. In a letter dated 15 October 1998, the Bank flatly refused the said request of PDIC.

x x x x x x x x x

2.11 Instead of releasing the funds requested by PDIC, the Bank, in a letter dated 12 November 1998, required the former to submit additional collateral in the form of a real estate mortgage notwithstanding the fact that the Secured Credit Line was amply collaterized by the Property.

2.12 Because of the unjustified and malicious refusal by the Bank to release the funds it committed to lend to PDIC, **the construction of the Project was delayed resulting in gross losses and damages upon PDIC**.

2.13 To minimize the losses and damages upon it, PDIC was constrained to resort to other sources of financing, regardless of additional costs. However, the arrogant refusal of the bank to release funds from the secured credit line it earlier approved, coupled with the period of time consumed by PDIC in finding alternative financing sources, substantially delayed the completion of the Project. Instead of the estimated one (1) year completion, the Project eventually took five (5) years to be completed.

x x x x x x x x x

2.15 As it was mandatory for PDIC to cancel the mortgage over the title to the property in order to be able to sell the townhouse units, PDIC literally begged the Bank to release the title. PDIC argued that no loans were ever released by the Bank from the Secured Credit Line; thus, there is absolutely no reason for the bank to hold on to the title.

x x x x x x x x x

2.17 Owing to the urgent need for the cancellation of the mortgage in order to complete the Project and considering that certain buyers have threatened to file civil and criminal cases against PDIC and its officers, PDIC was left with no choice but to accede, albeit involuntarily, to the capricious demand of the Bank. **Unless the mortgage on TCT No. 230861 was cancelled, PDIC could not sell the units of the Project and without any sales, PDIC faced the grim prospect of bankruptcy. PDIC was thus literally forced and hostage [sic] into agreeing to execute a substitute real estate mortgage. Thus, PDIC with all its objections was constrained to turn over to the Bank, the TCTs for twenty nine (29) units of the Project in exchange for the mother title (TCT No. 230861)**. x x x.

(Emphasis and underscoring supplied)

On the other hand, the *Amended* Complaint in the Makati RTC repleaded the same common allegations in above-quoted paragraphs 2.1 to 2.17. The *Second Amended* Complaint likewise reproduced *verbatim* these allegations as factual antecedents. **The parallelisms end there, however.**

The test of identity of causes of action lies on whether the **same evidence** would support and establish the former and present causes of action.[16] If the same body of evidence would sustain both actions, the two actions unmistakably descend from the same cause of action.

While the *Second Amended* Complaint pending before the Makati RTC and the Complaint pending before the Manila RTC have significantly similar factual antecedents, the causes of action proceed from different grounds calling for different bodies of evidence to support the parties' respective positions in each action.

[16] *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83, 103.

Thus, the Makati RTC *Amended* Complaint sought the **release** of the mortgage over the same condominium units and damages brought about by petitioner's alleged failure to provide funds under the secured credit line. The Manila RTC complaint sought the **annulment** of the mortgage constituted over the 29 condominium units and the foreclosure sale on the basis of alleged flaws and irregularities attendant to it.

The Manila RTC Complaint would thus have to rely on specific instances of supposed vitiated consent, fraud, lack of consideration and irregularities in the foreclosure sale, while the Makati RTC action would have to specifically dwell on evidence relating to the willful refusal of petitioner to release funds in the secured credit line and the losses incurred thereby by respondent.

Prior to foreclosure sale, an action for the release of the mortgage is a personal action, following the doctrine laid down in *Hernandez v. Rural Bank of Lucena*,[17] possession and ownership over the properties subject of the mortgage having remained with, in this case respondent-mortgagor.

Since petitioner had, in the interregnum, foreclosed the mortgage, respondent had to withdraw its action for release of mortgage and file the appropriate action for annulment of the foreclosure in the proper venue, which is Manila where the mortgaged properties are located.

As the Makati RTC still retained jurisdiction over the complaint for damages, which is a personal action, it properly reinstated it as the subject of respondent's *Second Amended* Complaint.

There is no gainsaying then that the action in Makati is different and distinct from the action in Manila, involving different periods of time, subject matter, and issues.

While respondent did not ask for damages in its Manila RTC action despite allegations of losses and damages that it suffered,

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[17] 171 Phil. 70 (1978); 81 SCRA 75; *Go v. United Coconut Planters Bank*, G.R. No. 156187, November 11, 2004, 442 SCRA 264, 273; *Vide*: *Carandang v. Court of Appeals*, G.R. No. L-44932, 15 April 1988, 160 SCRA 266.

this should not be taken to mean that it split its cause of action, venues of the two actions having been properly laid.[18]

Splitting a cause of action is the act of dividing a single cause of action, claim or demand into two or more parts, and bringing suit for one of such parts only, intending to reserve the rest for another separate action.[19]

In fine, respondent did not resort to forum shopping.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

EN BANC

[A.M. No. RTJ-08-2144. November 3, 2008]
(Formerly OCA IPI No. 06-2417-RTJ)

ATTY. RAUL H. SESBREÑO, *complainant, vs.* **JUDGE IRENEO L. GAKO, JR., Judge, Regional Trial Court (RTC), Branch 5, Cebu City, and MANUEL G. NOLLORA, Clerk of Court, RTC, Br. 5, Cebu City,** *respondents.*

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[18] Section 6 of Rule 2 of the Rules of Court states: Misjoinder of causes of action. — Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately.

[19] *Mallion v. Alcantara*, G.R. No. 141528, October 31, 2006, 506 SCRA 336, 343-344; *Perez v. Court of Appeals*, G.R. No. 157616, July 22, 2005, 464 SCRA 89, 104; *Spouses Romero v. Tan*, 468 Phil. 224, 239 (2004); *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 386 (2001).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CASES OR MATTERS BEFORE LOWER COURTS; PERIOD PRESCRIBED FOR ADJUDICATION AND RESOLUTION. — The Constitution mandates all lower courts to decide or resolve cases or matters within three (3) months from their date of submission. Accordingly, Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods. In line with the foregoing, the Court has laid down administrative guidelines to ensure the prompt disposition of judicial business. Thus, SC Administrative Circular No. 13-87 provides: 3. Judges shall observe scrupulously the periods prescribed by Article Vlll, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x. Furthermore, SC Administrative Circular No. 1-88 states: 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x.

2. JUDICIAL ETHICS; JUDGES; DUTIES AND RESPONSIBILITIES; NOT STRICTLY CONFINED TO JUDICIAL FUNCTIONS, AS HE IS ALSO AN ADMINISTRATOR. — It should be stressed that the duties and responsibilities of a judge are not strictly confined to judicial functions. He is also an administrator who must organize his court with a view to prompt and convenient dispatch of its business. As administrative officer of the Court, respondent judge should have required his clerk of court or any other court personnel to secure all the records of the case and keep the same intact although some of the volumes thereof would not be used in deciding the case. A judge is duty-bound to motivate his subordinates for the effective performance of the functions and duties of his office.

3. ID.; ID.; ID.; TO COMPLY WITH LAWFUL DIRECTIVES OF THE COURT. — Finally, respondent judge should also be held liable for failure to obey directives from the OCA. As

borne by the records, the two directives of the OCA, namely the 1st Indorsement dated January 19, 2006 and the 1st Tracer dated March 30, 2006, were received by respondent judge on February 9, 2006 and April 17, 2006, respectively. Still, he contumaciously refused to submit his comment. It was only upon the issuance by this Court of a Resolution dated January 24, 2007 directing him to show cause why he should not be administratively dealt with for refusing to submit his comment that respondent judge finally complied . We find the explanation of respondent judge that he suffered a mild stroke to be insufficient to exonerate him, although it may mitigate his liability. While he may have been suffering from some ailment, he failed to show that it totallly incapacitated him from complying with the lawful orders of the OCA. The failure of respondent judge to comply with the OCA's directives to file comment to the letter-complaint against him manifested his indifference to the lawful directives of the Court. In *Martinez v. Judge Zoleta*, we held: Again, we find the need and occasion to rule that a resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints.

4. ID.; ID.; LESS SERIOUS OFFENSE ENCOMPASSES DELAY IN RENDERING A DECISION OR ORDER AND FAILURE TO COMPLY WITH DIRECTIVES OF THE SUPREME COURT. — A judge's (1) delay in rendering a decision or order and (2) failure to comply with this Court's rules, directives and circulars constitute less serious offenses under Rule 140, Section 9 of the Rules of Court: SEC. 9. *Less Serious Charges.* — Less serious charges include: 1. Undue delay in rendering a decision or order, or in transmitting the records of a case; x x x 4. Violation of Supreme Court rules, directives and circulars.

5. ID.; ID.; ID.; PENALTIES. — SECTION 11 (B) of Rule 140 provides the following sanctions for less serious offenses: SEC.11. Sanctions. B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed: 1. Suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

6. POLITICAL LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERK OF COURT; AS ADMINISTRATIVE OFFICER, HE CONTROLS AND SUPERVISES THE SAFEKEEPING OF COURT RECORDS. — Under the 2002 Revised Manual for Clerks of Court, the branch clerk of court as the administrative officer of the court, among others, controls and supervises the safekeeping of court records. Moreover, Section 7, Rule 136 of the Rules of Court specifically mandates the clerk of court to safely keep all records, papers, files, exhibits and public property committed to his charge. As custodian of judicial records, it is incumbent upon him to ensure an orderly and efficient record management system in the court and to supervise the personnel under his office to function effectively. A clerk of court plays a key role in the complement of the court and cannot be permitted to slacken on his job under one pretext or another. He must be assiduous in performing his official duties and in supervising and managing court dockets and records.

7. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; CONSTRUED. — 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. Under Section 52 (B), Rule 1V of the Uniform Rules on Administrative Cases in the Civil Service in correlation with Rule X1V, Section 23 of the Omnibus Civil Service Rules and Regulations implementing Book V of Executive Order No. 292, the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day to six (6) months for the first offense and dismissal for the 2nd offense.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case against Judge Ireneo L. Gako, Jr. and Clerk of Court Manuel G. Nollora, both of the Regional Trial Court (RTC), Branch 5, Cebu City, stemmed from a complaint[1] filed by Atty. Raul H. Sesbreño charging Judge Gako with (a) violation of Rule 3.05, Canon 3, in relation to Rule 1.02, Canon 2 of the Code of Judicial Conduct for his delay in resolving a Motion for Reconsideration filed in Special Proceedings No. 916-R entitled "*Intestate Estate of Vito Borromeo*," (b) violation of Canon 2 of the said Code for acting on the said case after he had recused himself from the case, and (c) incompetence, together with Clerk of Court Nollora.

The complainant alleged that on June 27, 2003, he filed a motion for reconsideration of the Order[2] dated June 2, 2003 in Special Proceedings No. 916-R which was considered submitted for resolution per the Order dated July 4, 2003. According to the complainant, respondent Judge Gako deliberately failed to resolve the motion within the ninety (90)-day period prescribed by the Constitution, and in clear violation of the Code of Judicial Conduct, particularly Rule 3.05, Canon 3, mandating a judge to dispose of the court's business promptly and to decide cases within the required periods, and Rule 1.02, Canon 2, requiring judges to administer justice without delay.

The complainant further alleged that on April 26, 2004, respondent judge issued an Order inhibiting himself from handling Special Proceedings No. 916-R. However, almost five (5) months after such inhibition, respondent judge still continued to act on the said case by issuing an Order dated September 3, 2004

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

[2] Denying herein complainant's Urgent Motion for Satisfaction/Execution of the RTC Orders dated August 29, 1989 and October 3, 1990 awarding attorney's fees to the latter, which RTC Orders were affirmed *in toto* by the Court of Appeals in CA-G.R. SP-30134 and the Supreme Court in G.R. No. 124160 and G.R. No. 134874.

granting the Motion for Clarification/Reconsideration filed by the heirs of Patrocino Borromeo Herrera. This, according to the complainant, violated Canon 2 of the Code of Judicial Conduct, requiring a judge to avoid impropriety and the appearance of impropriety in all activities.

Complainant also charged respondent judge and his Clerk of Court of incompetence for failure to keep all the records of the case intact and for proceeding to resolve the case with incomplete records. Complainant asserted that respondents' incompetency is evident from the fact that when they turned over the records of the case to the RTC, Cebu City, Branch 9, only 16 out of the 72 volumes were accounted for as shown by the receipts signed by Clerk of Court Christine Doller on June 17, 2005[3] and August 11, 2005.[4]

In his 1st Indorsement dated January 19, 2006, Court Administrator Presbitero J. Velasco, Jr.[5] referred the letter-complaint to respondent judge for his comment within ten (10) days from receipt of the same. Respondent judge was likewise directed to comment on why no disciplinary action should be taken against him for violation of his professional responsibility as a lawyer pursuant to the resolution dated September 17, 2002 of the Court *En Banc* in A.M. 02-9-02-SC.[6] Said letter-complaint was also referred to Clerk of Court Nollora who filed his comment on March 20, 2006.[7]

When respondent judge failed to comply with the 1st Indorsement, then Court Administrator Velasco sent a 1st Tracer dated March 30, 2006 to respondent judge reiterating the directive for him to file his comment within five (5) days from receipt thereof, otherwise, the matter will be submitted to the Court without his comment.[8] Again, respondent judge failed to comply.

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[3] *Rollo*, p. 46.

[4] *Id.* at 47.

[5] Now Supreme Court Associate Justice.

[6] *Rollo*, p. 13.

[7] *Id.* at 15.

[8] *Id.* at 18.

For refusing to submit his comment despite the two (2) directives of the Office of the Court Administrator (OCA), the Court issued a Resolution[9] directing respondent judge to show cause why he should not be administratively dealt with and to submit the required comment both within five (5) days from receipt thereof, with warning that in case of failure to comply, the Court shall take the necessary action against him and decide the administrative complaint on the basis of the record on hand.

On March 15, 2007, respondent judge finally filed his Compliance[10] with an opening statement that he compulsorily retired from the service on September 20, 2006 and while working on his retirement papers, he suffered a mild stroke which necessitated his rehabilitation in his home.

Respondent judge explained that the instant administrative matter stemmed from his issuance of the Order dated June 2, 2003 denying Virginia Lim Sesbreño's claim for attorney's fees from the estate of Vito Borromeo. From the denial of his claim, complainant, Atty. Raul Sesbreño, filed a motion for reconsideration. According to respondent judge, he did not act on the said motion because he believed that Virginia Lim Sesbreño should be the person who should have filed the motion for reconsideration and not herein complainant. Subsequently, respondent judge issued an order voluntarily inhibiting himself from the case because complainant had already filed the instant administrative complaint against him.

With regard to his action on the motion filed by the heirs of Patrocino Borromeo Herrera despite his Order inhibiting himself from proceeding with the said case, respondent judge reasoned out that since the inhibition was voluntary on his part as the presiding judge, he felt then that it was also his discretion to disregard his Order.

Explaining on how he was able to resolve the motion/s filed in Special Proceedings No. 916-R, despite the incomplete records

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[9] *Id*. at 22.

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

of the said case, respondent judge maintained that his resolutions were based on the pertinent records of the case that were forwarded to him.

On his part, respondent Clerk of Court Nollora admitted in his Comment[11] dated February 6, 2006 that only 16 volumes of the records of the case were turned over by their sala (Branch 5) to Branch 9. However, he hastened to add that only 16 volumes were received by them from the Office of the Clerk of Court. According to Nollora, he did not ask for the other volumes because there was no order from the court and that the motions and incidents submitted for resolution can be resolved even without reference to the other records of the case. He added that the remaining volumes would only congest their already filled mini-bodega and steel cabinets.

Upon evaluation of the case, the OCA, in its Memorandum Report[12] dated June 12, 2008, made the following recommendations:

(a) The instant administrative complaint be RE-DOCKETED as a regular administrative matter;

(b) Clerk of Court Manuel G. Nollora, Regional Trial Court, Branch 5, Cebu City be (a) found guilty of simple neglect of duty, (b) FINED in the amount equivalent to one (1) month salary, and (C) STERNLY WARNED that a repetition of the same or similar offense shall be dealt with more severely, and

(c) Former Presiding Judge Ireneo G. Gako, Regional Trial Court, Branch 5, Cebu City be (a) found guilty of undue delay in rendering a decision or order and of violating a Supreme Court Circular, (b) FINED in the amount of Forty Thousand Pesos (₱40,000.00). Considering that respondent judge has already returned from the judicial service, let the same amount be DEDUCTED from his retirement benefits.

The Court agrees with the findings of the OCA.

The Constitution mandates all lower courts to decide or resolve cases or matters within three (3) months from their date of

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[11] *Id*. at 15-16.

[12] *Id*. at 42-43.

submission. Accordingly, Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct direct judges to administer justice impartially and without delay and to dispose of the court's business promptly and decide cases within the required periods.

In line with the foregoing, the Court has laid down administrative guidelines to ensure the prompt disposition of judicial business. Thus, SC Administrative Circular No. 13-87 provides:

> 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x.

Furthermore, SC Administrative Circular No. 1-88 states:

> 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x.

Indisputably, respondent judge failed to act on the Motion for Reconsideration within three (3) months from the time said motion was submitted for resolution on July 4, 2003. His claim that the motion was not filed by the proper party is not a valid excuse to simply ignore said motion. Instead, he should have accordingly formally disposed of such motion. While it is true that respondent judge issued an Order voluntarily inhibiting himself from handling Special Proceedings No. 916-R, however, it does not appear on record that the Executive Judge was furnished with a copy of the said order for appropriate action. Respondent judge cannot also justify his inaction by his inhibition since if it was really his intention to refrain from handling the case, he should not have acted on the subsequent Motion for Clarification/ Reconsideration filed by the heirs of Patrocino Borromeo Herrera.

All told, the unreasonable delay of the respondent judge in resolving the motion submitted for his resolution clearly constituted a violation of complainant's constitutional right to a speedy disposition of his case. Having failed to resolve the Motion for Reconsideration within the prescribed period of time, respondent

judge is liable for undue delay in resolving a decision or order which is considered a less serious offense.

Regarding the charge of incompetency, it should be stressed that the duties and responsibilities of a judge are not strictly confined to judicial functions. He is also an administrator who must organize his court with a view to prompt and convenient dispatch of its business. As administrative officer of the Court, respondent judge should have required his clerk of court or any other court personnel to secure all the records of the case and keep the same intact although some of the volumes thereof would not be used in deciding the case. A judge is duty-bound to motivate his subordinates for the effective performance of the functions and duties of his office. In fact, the imperative and sacred duty of each and everyone in the court is to maintain its good name and standing as a temple of justice. Hence, any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary, shall be condemned and cannot be countenanced.[13]

Finally, respondent judge should also be held liable for failure to obey directives from the OCA. As borne by the records, the two directives of the OCA, namely the 1st Indorsement dated January 19, 2006 and the 1st Tracer dated March 30, 2006, were received by respondent judge on February 9, 2006 and April 17, 2006, respectively. Still, he contumaciously refused to submit his comment. It was only upon the issuance by this Court of a Resolution dated January 24, 2007 directing him to show cause why he should not be administratively dealt with for refusing to submit his comment that respondent judge finally complied.

We find the explanation of respondent judge that he suffered a mild stroke to be insufficient to exonerate him, although it may mitigate his liability. While he may have been suffering

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[13] *Kummer v. Abella-Aquino*, A.M. No. RTJ-04-1873, February 28, 2005, 452 SCRA 396, 405.

from some ailment, he failed to show that it totally incapacitated him from complying with the lawful orders of the OCA. The failure of respondent judge to comply with the OCA's directives to file comment to the letter-complaint against him manifested his indifference to the lawful directives of the Court. In *Martinez v. Judge Zoleta*,[14] we held:

> Again, we find the need and occasion to rule that a resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively.Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints.

A judge's (1) delay in rendering a decision or order and (2) failure to comply with this Court's rules, directives and circulars constitute less serious offenses under Rule 140, Section 9 of the Rules of Court:

> SEC. 9. *Less Serious Charges*. — Less serious charges include:
>
> 1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
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> x x x x x x x x x
>
> 4. Violation of Supreme Court rules, directives and circulars;

Section 11(B) of said Rule 140 provides the following sanctions for less serious offenses:

> SEC. 11. Sanctions.
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> B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

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[14] 374 Phil. 35, 47 (1999).

1. Suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

For his part, respondent Clerk of Court Nollora, as an officer of the court, is duty-bound to use reasonable skill and diligence in completing the record of the case even without any order from his presiding judge, as he is aware whether the record is complete or incomplete when he receives them. Under the 2002 Revised Manual for Clerks of Court, the branch clerk of court as the administrative officer of the court, among others, controls and supervises the safekeeping of court records. Moreover, Section 7, Rule 136 of the Rules of Court specifically mandates the clerk of court to safely keep all records, papers, files, exhibits and public property committed to his charge. As custodian of judicial records, it is incumbent upon him to ensure an orderly and efficient record management system in the court and to supervise the personnel under his office to function effectively. A clerk of court plays a key role in the complement of the court and cannot be permitted to slacken on his job under one pretext or another. He must be assiduous in performing his official duties and in supervising and managing court dockets and records.[15] In this case, he fell short of his duty. Thus, we find him administratively liable for simple neglect of duty.

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. Under Section 52(B), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service in correlation with Rule XIV, Section 23 of the Omnibus Civil Service Rules and Regulations implementing Book V of Executive Order No. 292, the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day to six (6) months for the first offense and dismissal for the 2nd offense.

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[15] *Salvador v. Serrano*, A.M. No. P-06-2104, January 31, 2006, 481 SCRA 55, 71.

As it appears it was respondent clerk of court's first infraction, we find the penalty of suspension for one (1) month and one (1) day without pay to be sufficient. Furthermore, to prevent any undue adverse effect on the public service which would ensue should work be left unattended by reason of respondent's suspension, we deem it wise to convert his penalty to the payment of a fine. Thus, in line with jurisprudence,[16] we impose a fine instead of suspension, so that he can continue to discharge his assigned tasks.

WHEREFORE, judgment is hereby rendered:

(1) Finding Judge IRENEO L. GAKO, JR. *GUILTY* for two less serious offenses: (1) undue delay in rendering a decision/ resolution and (2) violation of Court directives for which he is hereby *FINED* in the total amount of ₱30,000.00 to be deducted from the amount withheld from his retirement benefits.

2) Finding Clerk of Court MANUEL G. NOLLORA *GUILTY* for simple neglect of duty and is *FINED* in the amount equivalent to one (1) month salary and sternly WARNED that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Brion, JJ.,* concur.

Reyes, J., on official leave.

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[16] *Aquino v. Lavadia*, A.M. No. P-01-1483, September 20, 2001, 365 SCRA 441, 446-447.

EN BANC

[G.R. No. 157870. November 3, 2008]

SOCIAL JUSTICE SOCIETY (SJS), *petitioner, vs.* **DANGEROUS DRUGS BOARD and PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA),** *respondents.*

[G.R. No. 158633. November 3, 2008]

ATTY. MANUEL J. LASERNA, JR., *petitioner, vs.* **DANGEROUS DRUGS BOARD and PHILIPPINE DRUG ENFORCEMENT AGENCY,** *respondents.*

[G.R. No. 161658. November 3, 2008]

AQUILINO Q. PIMENTEL, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE CONSTITUTION IS THE BASIC LAW TO WHICH ALL LAWS MUST CONFORM. — It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution. In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.

2. ID.; ID.; LEGISLATIVE POWER; SUBJECT TO SUBSTANTIVE AND CONSTITUTIONAL LIMITATIONS. — Congress' inherent legislative powers, broad as they may be, are subject to certain limitations. As early as 1927, in *Government v. Springer*, the Court has defined, in the abstract, the limits on legislative power in the following wise: Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under

delegated authority, the powers of each of the departments x x x are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap. Thus, legislative power remains limited in the sense that it is subject to substantive and constitutional limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation. The substantive constitutional limitations are chiefly found in the Bill of Rights and other provisions, such as Sec. 3, Art. VI of the Constitution prescribing the qualifications of candidates for senators.

3. ID.; ID.; COMELEC; CANNOT VALIDLY IMPOSE QUALIFICATIONS ON CANDIDATES FOR SENATOR IN ADDITION TO WHAT THE CONSTITUTION PROVIDES. — In the same vein, the COMELEC cannot, in the guise of enforcing and administering election laws or promulgating rules and regulations to implement Sec. 36 (g), validly impose qualifications on candidates for senator in addition to what the Constitution prescribes. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution. Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test. " Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Whether or not the drug-free bar set up under the challenged provision

is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.

4. CRIMINAL LAW; SPECIAL LAWS; COMPREHENSIVE DANGEOUS DRUGS ACT OF 2002; PROVISIONS OF RA NO. 9165 REQUIRING MANDATORY, RANDOM AND SUSPICIONLESS DRUG TESTING OF STUDENTS ARE CONSTITUTIONAL. — In sum, what can reasonably be deduced from the above two cases and applied to this jurisdiction are: (1) schools and their administrators stand *in loco parentis* with respect to their students; (2) minor students have contextually fewer rights than an adult, and are subject to the custody and supervision of their parents, guardians, and schools; (3) schools, acting *in loco parentis,* have a duty to safeguard the health and well-being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and (4) schools have the right to impose conditions on applicants for admission that are fair, just, and non-discriminatory. Guided by *Vernonia* and *Board of Education*, the Court is of the view and so holds that the provisions of RA 9165 requiring mandatory, random, and suspicionless drug testing of students are constitutional. Indeed, it is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY; GUARANTEE AGAINST UNWARRANTED SEARCH. — The essence of privacy is the right to be left alone. In context, the right to privacy means the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities. And while there has been general agreement as to the basic function of the guarantee against unwarranted search, "translation of the abstract prohibition against 'unreasonable searches and seizures' into workable broad guidelines for the decision of particular cases is a difficult task," to borrow from *C. Camara v. Municipal Court*. Authorities are agreed though

that the right to privacy yields to certain paramount rights of the public and defers to the state's exercise of police power.

6. ID.; ID.; ID.; ID.; REASONABLENESS IS THE TOUCHSTONE OF VALIDITY OF A GOVERNMENT SEARCH OR INTRUSION. — As the warrantless clause of Sec. 2, Art III of the Constitution is couched and as has been held, "reasonableness" is the touchstone of the validity of a government search or intrusion. And whether a search at issue hews to the reasonableness standard is judged by the balancing of the government-mandated intrusion on the individual's privacy interest against the promotion of some compelling state interest. In the criminal context, reasonableness requires showing of probable cause to be personally determined by a judge. Given that the drug-testing policy for employees — and students for that matter — under RA 9165 is in the nature of administrative search needing what was referred to in *Vernonia* as "swift and informal disciplinary procedures", the probable-cause standard is not required or even practicable. Be that as it may, the review should focus on the reasonableness of the challenged administrative search in question.

7. ID.; ID.; ID.; ID.; ID.; FIRST FACTOR TO CONSIDER IN THE MATTER OF REASONABLENESS IN THE NATURE OF THE PRIVACY INTEREST UPON WHICH THE DRUG TESTING WHICH EFFECTS A SEARCH WITHIN THE MEANING OF SEC. 2, ART. III OF THE CONSTITUTION, INTRUDES. — The first factor to consider in the matter of reasonableness is the nature of the privacy interest upon which the drug testing, which effects a search within the meaning of Sec. 2, Art. III of the Constitution, intrudes. In this case, the office or workplace serves as the backdrop for the analysis of the privacy expectation of the employees and the reasonableness of drug testing requirement. The employees' privacy interest in an office is to a large extent circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld.

8. ID.; ID.; ID.; ID.; ID.; SECOND FACTOR-CHARACTER OF THE INTRUSION AUTHORIZED BY LAW. — Just as defining

as the first factor is the character of the intrusion authorized by the challenged law. Reduced to a question form, is the scope of the search or intrusion clearly set forth, or, as formulated in *Ople v. Torres*, is the enabling law authorizing a search "narrowly drawn" or "narrowly focused"? The poser should be answered in the affirmative. For one, Sec. 36 of RA 9165 and its implementing rules and regulations (IRR), as couched, contain provisions specifically directed towards preventing a situation that would unduly embarrass the employees or place them under a humiliating experience. While every officer and employee in a private establishment is under the law deemed forewarned that he or she may be a possible subject of a drug test, nobody is really singled out in advance for drug testing. The goal is to discourage drug use by not telling in advance anyone when and who is to be tested. And as may be observed, Sec. 36(d) of RA 9165 itself prescribes what, in *Ople*, is a narrowing ingredient by providing that the employees concerned shall be subjected to "random drug test as contained in the company's work rules and regulations x x x for purposes of reducing the risk in the work place."

9. ID.; ID.; ID.; ID.; ID.; THIRD FACTOR-THE MECHANICS OF THE LAW. — For another, the random drug testing shall be undertaken under conditions calculated to protect as much as possible the employee's privacy and dignity. As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, *i.e.*, the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the test shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody. In addition, the IRR issued by the DOH provides that access to the drug results shall be on the "need to know" basis; that the "drug test result and the records shall be [kept] confidential subject to the usual accepted practices to protect the confidentiality of the test results". Notably, RA 9165 does not oblige the employer concerned to report to the prosecuting agencies any information or evidence relating to the violation of the *Comprehensive Dangerous Drugs Act* received as a result of the operation of the drug testing. All told, therefore, the intrusion into the employees' privacy, under RA 9165, is

accompanied by proper safeguards, particularly against embarrassing leakages of test results, and is relatively minimal.

10. ID.; ID.; ID.; ID.; ID.; IF RA NO. 9165 PASSES NORM OF REASONABLENESS FOR PRIVATE EMPLOYEES, THE MORE REASON THAT IT SHOULD PASS TEST FOR CIVIL SERVANTS. — Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.

11. ID.; ID.; LEGISLATIVE POWER; DELEGATION; VALIDITY. — The validity of delegating legislative power is now a quiet area in the constitutional landscape. In the face of the increasing complexity of the task of the government and the increasing inability of the legislature to cope directly with the many problems demanding its attention, resort to delegation of power, or entrusting to administrative agencies the power of subordinate legislation, has become imperative, as here.

12. CRIMINAL LAW; SPECIAL LAWS; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; IMPOSITION OF MANDATORY DRUG TESTING ON ACCUSED WOULD VIOLATE A PERSON'S RIGHT TO PRIVACY. — We find the situation entirely different in the case of persons charged before the public prosecutor's office with criminal offenses punishable with six (6) years and one (1) day imprisonment. The operative concepts in the mandatory drug testing are "randomness" and "suspicionless." In the case of persons charged with a crime before the prosecutor's office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to

drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy. To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 9165. Drug testing in this case would violate a person's right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.

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D E C I S I O N

VELASCO, JR., *J.*:

In these kindred petitions, the constitutionality of Section 36 of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, insofar as it requires mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private offices, and persons charged before the prosecutor's office with certain offenses, among other personalities, is put in issue.

As far as pertinent, the challenged section reads as follows:

SEC. 36. *Authorized Drug Testing*.—Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of the test results. x x x The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of drug used and the confirmatory test which will confirm a positive screening test. x x x The following shall be subjected to undergo drug testing:

x x x x x x x x x

(c) Students of secondary and tertiary schools.—Students of secondary and tertiary schools shall, pursuant to the related rules and regulations as contained in the school's student handbook and with notice to the parents, undergo a random drug testing x x x;

(d) Officers and employees of public and private offices.—Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, x x x for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

x x x x x x x x x

(f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall undergo a mandatory drug test;

(g) All candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test.

In addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act.

G.R. No. 161658 (*Aquilino Q. Pimentel, Jr. v. Commission on Elections*)

On December 23, 2003, the Commission on Elections (COMELEC) issued Resolution No. 6486, prescribing the rules and regulations on the mandatory drug testing of candidates for public office in connection with the May 10, 2004 synchronized national and local elections. The pertinent portions of the said resolution read as follows:

WHEREAS, Section 36 (g) of Republic Act No. 9165 provides:

SEC. 36. *Authorized Drug Testing.* — x x x

x x x x x x x x x

(g) All candidates for public office x x x both in the national or local government **shall undergo a mandatory drug test**.

WHEREAS, Section 1, Article XI of the 1987 Constitution provides that public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency;

WHEREAS, by requiring candidates to undergo mandatory drug test, the public will know the quality of candidates they are electing and they will be assured that only those who can serve with utmost responsibility, integrity, loyalty, and efficiency would be elected x x x.

NOW THEREFORE, The [COMELEC], pursuant to the authority vested in it under the Constitution, Batas Pambansa Blg. 881 (Omnibus Election Code), [RA] 9165 and other election laws, RESOLVED to promulgate, as it hereby promulgates, the following rules and regulations on the conduct of mandatory drug testing to candidates for public office[:]

SECTION 1. *Coverage*. — **All candidates for public office, both national and local, in the May 10, 2004 Synchronized National and Local Elections** shall undergo mandatory drug test in government forensic laboratories or any drug testing laboratories monitored and accredited by the Department of Health.

SEC. 3. x x x

On March 25, 2004, in addition to the drug certificates filed with their respective offices, the Comelec Offices and employees concerned shall submit to the Law Department two (2) separate lists of candidates. The first list shall consist of those candidates who complied with the mandatory drug test while the second list shall consist of those candidates who failed to comply x x x.

SEC. 4. *Preparation and publication of names of candidates*. — Before the start of the campaign period, the [COMELEC] shall prepare two separate lists of candidates. The first list shall consist of those candidates who complied with the mandatory drug test while the second list shall consist of those candidates who failed to comply with said drug test. x x x

SEC. 5. *Effect of failure to undergo mandatory drug test and file drug test certificate*.—No person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test and filed with the offices enumerated under Section 2 hereof the drug test certificate herein required. (Emphasis supplied.)

Petitioner Aquilino Q. Pimentel, Jr., a senator of the Republic and a candidate for re-election in the May 10, 2004 elections,[1] filed a Petition for *Certiorari* and Prohibition under Rule 65. In it, he seeks (1) to nullify Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 dated December 23, 2003 for being unconstitutional in that they impose a qualification for candidates for senators in addition to those already provided for in the 1987 Constitution; and (2) to enjoin the COMELEC from implementing Resolution No. 6486.

Pimentel invokes as legal basis for his petition Sec. 3, Article VI of the Constitution, which states:

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

According to Pimentel, the Constitution only prescribes a maximum of five (5) qualifications for one to be a candidate for, elected to, and be a member of the Senate. He says that both the Congress and COMELEC, by requiring, via RA 9165 and Resolution No. 6486, a senatorial aspirant, among other candidates, to undergo a mandatory drug test, create an additional qualification that all candidates for senator must first be certified as drug free. He adds that there is no provision in the Constitution authorizing the Congress or COMELEC to expand the qualification requirements of candidates for senator.

G.R. No. 157870 (*Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*)

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[1] Re-elected as senator in the 2004 elections.

In its Petition for Prohibition under Rule 65, petitioner Social Justice Society (SJS), a registered political party, seeks to prohibit the Dangerous Drugs Board (DDB) and the Philippine Drug Enforcement Agency (PDEA) from enforcing paragraphs (c), (d), (f), and (g) of Sec. 36 of RA 9165 on the ground that they are constitutionally infirm. For one, the provisions constitute undue delegation of legislative power when they give unbridled discretion to schools and employers to determine the manner of drug testing. For another, the provisions trench in the equal protection clause inasmuch as they can be used to harass a student or an employee deemed undesirable. And for a third, a person's constitutional right against unreasonable searches is also breached by said provisions.

G.R. No. 158633 (*Atty. Manuel J. Laserna, Jr. v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*)

Petitioner Atty. Manuel J. Laserna, Jr., as citizen and taxpayer, also seeks in his Petition for *Certiorari* and Prohibition under Rule 65 that Sec. 36(c), (d), (f), and (g) of RA 9165 be struck down as unconstitutional for infringing on the constitutional right to privacy, the right against unreasonable search and seizure, and the right against self-incrimination, and for being contrary to the due process and equal protection guarantees.

The Issue on *Locus Standi*

First off, we shall address the justiciability of the cases at bench and the matter of the standing of petitioners SJS and Laserna to sue. As respondents DDB and PDEA assert, SJS and Laserna failed to allege any incident amounting to a violation of the constitutional rights mentioned in their separate petitions.[2]

It is basic that the power of judicial review can only be exercised in connection with a *bona fide* controversy which involves the statute sought to be reviewed.[3] But even with the presence of an actual case or controversy, the Court may refuse to exercise judicial review unless the constitutional question is brought before

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[2] *Rollo* (G.R. No. 158633), pp. 184-185.

[3] *Dumlao v. COMELEC*, No. 52245, January 22, 1980, 95 SCRA 392, 401.

it by a party having the requisite standing to challenge it.[4] To have standing, one must establish that he or she has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.[5]

The rule on standing, however, is a matter of procedure; hence, it can be relaxed for non-traditional plaintiffs, like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.[6] There is no doubt that Pimentel, as senator of the Philippines and candidate for the May 10, 2004 elections, possesses the requisite standing since he has substantial interests in the subject matter of the petition, among other preliminary considerations. Regarding SJS and Laserna, this Court is wont to relax the rule on *locus standi* owing primarily to the transcendental importance and the paramount public interest involved in the enforcement of Sec. 36 of RA 9165.

The Consolidated Issues

The principal issues before us are as follows:

(1) Do Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 impose an additional qualification for candidates for senator? Corollarily, can Congress enact a law prescribing qualifications for candidates for senator in addition to those laid down by the Constitution? and

(2) Are paragraphs (c), (d), (f), and (g) of Sec. 36, RA 9165 unconstitutional? Specifically, do these paragraphs violate the

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[4] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 939 (2003).

[5] *Gonzales v. Narvasa*, G.R. No. 140835, August 14, 2000, 337 SCRA 733, 740.

[6] *Tatad v. Secretary of the Department of Energy*, G.R. Nos. 124360 & 127867, November 5, 1997, 281 SCRA 330, 349; *De Guia v. COMELEC*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.

right to privacy, the right against unreasonable searches and seizure, and the equal protection clause? Or do they constitute undue delegation of legislative power?

Pimentel Petition
(Constitutionality of Sec. 36[g] of RA 9165 and COMELEC Resolution No. 6486)

In essence, Pimentel claims that Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 illegally impose an additional qualification on candidates for senator. He points out that, subject to the provisions on nuisance candidates, a candidate for senator needs only to meet the qualifications laid down in Sec. 3, Art. VI of the Constitution, to wit: (1) citizenship, (2) voter registration, (3) literacy, (4) age, and (5) residency. Beyond these stated qualification requirements, candidates for senator need not possess any other qualification to run for senator and be voted upon and elected as member of the Senate. The Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate,[7] or alter or enlarge the Constitution.

Pimentel's contention is well-taken. Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution.[8] In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.[9]

Congress' inherent legislative powers, broad as they may be, are subject to certain limitations. As early as 1927, in

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[7] *Palmer v. Board of Education*, 276 NY 222 11 NE 2d 887.

[8] Cruz, *CONSTITUTIONAL LAW* 4 (2000).

[9] *Mutuc v. Commission on Elections*, No. L-32717, November 26, 1970, 36 SCRA 228, 234.

Government v. Springer, the Court has defined, in the abstract, the limits on legislative power in the following wise:

> Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments x x x are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.[10]

Thus, legislative power remains limited in the sense that it is subject to substantive and constitutional limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation.[11] The substantive constitutional limitations are chiefly found in the Bill of Rights[12] and other provisions, such as Sec. 3, Art. VI of the Constitution prescribing the qualifications of candidates for senators.

In the same vein, the COMELEC cannot, in the guise of enforcing and administering election laws or promulgating rules and regulations to implement Sec. 36(g), validly impose qualifications on candidates for senator in addition to what the Constitution prescribes. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution.[13]

Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the

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[10] 50 Phil. 259, 309 (1927).

[11] J. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 604 (1996).

[12] *Id.*

[13] See concurring opinion in *Go v. Commision on Elections*, G.R. No. 147741, May 10, 2001, 357 SCRA 739, 753.

qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test." Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.

It may of course be argued, in defense of the validity of Sec. 36(g) of RA 9165, that the provision does not expressly state that non-compliance with the drug test imposition is a disqualifying factor or would work to nullify a certificate of candidacy. This argument may be accorded plausibility if the drug test requirement is optional. But the particular section of the law, without exception, made drug-testing on those covered mandatory, necessarily suggesting that the obstinate ones shall have to suffer the adverse consequences for not adhering to the statutory command. And since the provision deals with candidates for public office, it stands to reason that the adverse consequence adverted to can only refer to and revolve around the election and the assumption of public office of the candidates. Any other construal would reduce the mandatory nature of Sec. 36(g) of RA 9165 into a pure jargon without meaning and effect whatsoever.

While it is anti-climactic to state it at this juncture, COMELEC Resolution No. 6486 is no longer enforceable, for by its terms, it was intended to cover only the May 10, 2004 synchronized elections and the candidates running in that electoral event. Nonetheless, to obviate repetition, the Court deems it appropriate

to review and rule, as it hereby rules, on its validity as an implementing issuance.

It ought to be made abundantly clear, however, that the unconstitutionality of Sec. 36(g) of RA 9165 is rooted on its having infringed the constitutional provision defining the qualification or eligibility requirements for one aspiring to run for and serve as senator.

SJS Petition
(Constitutionality of Sec. 36[c], [d], [f], and [g] of RA 9165)

The drug test prescribed under Sec. 36(c), (d), and (f) of RA 9165 for secondary and tertiary level students and public and private employees, while mandatory, is a random and suspicionless arrangement. The objective is to stamp out illegal drug and safeguard in the process "the well being of [the] citizenry, particularly the youth, from the harmful effects of dangerous drugs." This statutory purpose, per the policy-declaration portion of the law, can be achieved via the pursuit by the state of "an intensive and unrelenting campaign against the trafficking and use of dangerous drugs x x x through an integrated system of planning, implementation and enforcement of anti-drug abuse policies, programs and projects."[14] The primary legislative intent is not criminal prosecution, as those found positive for illegal drug use as a result of this random testing are not necessarily treated as criminals. They may even be exempt from criminal liability should the illegal drug user consent to undergo rehabilitation. Secs. 54 and 55 of RA 9165 are clear on this point:

Sec. 54. *Voluntary Submission of a Drug Dependent to Confinement, Treatment and Rehabilitation*. — A drug dependent or any person who violates Section 15 of this Act may, by himself/herself or through his/her parent, [close relatives] x x x apply to the Board x x x for treatment and rehabilitation of the drug dependency. Upon such application, the Board shall bring forth the matter to the Court which shall order that the applicant be examined for drug dependency. If the examination x x x results in the certification

[14] RA 9165, Sec. 2.

that the applicant is a drug dependent, he/she shall be ordered by the Court to undergo treatment and rehabilitation in a Center designated by the Board x x x.

x x x x x x x x x

Sec. 55. *Exemption from the Criminal Liability Under the Voluntary Submission Program*.— A drug dependent under the voluntary submission program, who is finally discharged from confinement, shall be exempt from the criminal liability under Section 15 of this Act subject to the following conditions:

x x x x x x x x x

School children, the US Supreme Court noted, are most vulnerable to the physical, psychological, and addictive effects of drugs. Maturing nervous systems of the young are more critically impaired by intoxicants and are more inclined to drug dependency. Their recovery is also at a depressingly low rate.[15]

The right to privacy has been accorded recognition in this jurisdiction as a facet of the right protected by the guarantee against unreasonable search and seizure[16] under Sec. 2, Art. III[17] of the Constitution. But while the right to privacy has long come into its own, this case appears to be the first time that the validity of a state-decreed search or intrusion through the medium of mandatory random drug testing among students and employees is, in this jurisdiction, made the focal point. Thus, the issue tendered in these proceedings is veritably one of first impression.

US jurisprudence is, however, a rich source of persuasive jurisprudence. With respect to random drug testing among school

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[15] *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), 661.

[16] *Ople v. Torres*, G.R. No. 127685, July 23, 1998, 293 SCRA 141, 169; citing *Morfe v. Mutuc*, No. L-20387, January 31, 1968, 22 SCRA 424, 444-445.

[17] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized.

children, we turn to the teachings of *Vernonia School District 47J v. Acton* (*Vernonia*) and *Board of Education of Independent School District No. 92 of Pottawatomie County, et al. v. Earls, et al.* (*Board of Education*),[18] both fairly pertinent US Supreme Court-decided cases involving the constitutionality of governmental search.

In *Vernonia*, school administrators in Vernonia, Oregon wanted to address the drug menace in their respective institutions following the discovery of frequent drug use by school athletes. After consultation with the parents, they required random urinalysis drug testing for the school's athletes. James Acton, a high school student, was denied participation in the football program after he refused to undertake the urinalysis drug testing. Acton forthwith sued, claiming that the school's drug testing policy violated, *inter alia*, the Fourth Amendment[19] of the US Constitution.

The US Supreme Court, in fashioning a solution to the issues raised in *Vernonia*, considered the following: (1) schools stand *in loco parentis* over their students; (2) school children, while not shedding their constitutional rights at the school gate, have less privacy rights; (3) athletes have less privacy rights than non-athletes since the former observe communal undress before and after sports events; (4) by joining the sports activity, the athletes voluntarily subjected themselves to a higher degree of school supervision and regulation; (5) requiring urine samples does not invade a student's privacy since a student need not undress for this kind of drug testing; and (6) there is need for the drug testing because of the dangerous effects of illegal drugs on the young. The US Supreme Court held that the policy constituted reasonable search under the Fourth[20] and 14th

[18] 536 U.S. 822 (2002); cited in 2 Bernas, *CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS* 224-227 (2004).

[19] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[20] The Fourth Amendment is almost similar to Sec. 2, Art. III of the Constitution, except that the latter limited the determination of probable cause

Amendments and declared the random drug-testing policy constitutional.

In *Board of Education*, the Board of Education of a school in Tecumseh, Oklahoma required a drug test for high school students desiring to join extra-curricular activities. Lindsay Earls, a member of the show choir, marching band, and academic team declined to undergo a drug test and averred that the drug-testing policy made to apply to non-athletes violated the Fourth and 14th Amendments. As Earls argued, unlike athletes who routinely undergo physical examinations and undress before their peers in locker rooms, non-athletes are entitled to more privacy.

The US Supreme Court, citing *Vernonia*, upheld the constitutionality of drug testing even among non-athletes on the basis of the school's custodial responsibility and authority. In so ruling, said court made no distinction between a non-athlete and an athlete. It ratiocinated that schools and teachers act in place of the parents with a similar interest and duty of safeguarding the health of the students. And in holding that the school could implement its random drug-testing policy, the Court hinted that such a test was a kind of search in which even a reasonable parent might need to engage.

In sum, what can reasonably be deduced from the above two cases and applied to this jurisdiction are: (1) schools and their administrators stand *in loco parentis* with respect to their students; (2) minor students have contextually fewer rights than an adult, and are subject to the custody and supervision of their parents, guardians, and schools; (3) schools, acting *in loco parentis*, have a duty to safeguard the health and well-being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and (4) schools have the right to impose conditions on applicants for admission that are fair, just, and non-discriminatory.

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to a judge after an examination under oath of the complainant and his witnesses. Hence, pronouncements of the US Federal Supreme Court and State Appellate Court may be considered doctrinal in this jurisdiction, unless they are manifestly contrary to our Constitution. See Herrera, *HANDBOOK ON ARREST, SEARCH AND SEIZURE* 8 (2003).

Guided by *Vernonia* and *Board of Education*, the Court is of the view and so holds that the provisions of RA 9165 requiring mandatory, random, and suspicionless drug testing of students are constitutional. Indeed, it is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements.

The Court can take judicial notice of the proliferation of prohibited drugs in the country that threatens the well-being of the people,[21] particularly the youth and school children who usually end up as victims. Accordingly, and until a more effective method is conceptualized and put in motion, a random drug testing of students in secondary and tertiary schools is not only acceptable but may even be necessary if the safety and interest of the student population, doubtless a legitimate concern of the government, are to be promoted and protected. To borrow from *Vernonia*, "[d]eterring drug use by our Nation's schoolchildren is as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs"; the necessity for the State to act is magnified by the fact that the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty.[22] Needless to stress, the random testing scheme provided under the law argues against the idea that the testing aims to incriminate unsuspecting individual students.

Just as in the case of secondary and tertiary level students, the mandatory but random drug test prescribed by Sec. 36 of RA 9165 for officers and employees of public and private offices is justifiable, albeit not exactly for the same reason. The Court notes in this regard that petitioner SJS, other than saying that "subjecting almost everybody to drug testing, without probable cause, is unreasonable, an unwarranted intrusion of the individual right to privacy,"[23] has failed to show how the mandatory, random,

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[21] *Tolentino v. Alconcel*, No. 63400, March 18, 1983, 121 SCRA 92, 95-96.

[22] *Rollo* (G.R. No. 158633), p. 204, respondents' Consolidated Memorandum.

[23] *Rollo* (G.R. No. 157870), p. 10.

and suspicionless drug testing under Sec. 36(c) and (d) of RA 9165 violates the right to privacy and constitutes unlawful and/or unconsented search under Art. III, Secs. 1 and 2 of the Constitution.[24] Petitioner Laserna's lament is just as simplistic, sweeping, and gratuitous and does not merit serious consideration. Consider what he wrote without elaboration:

> The US Supreme Court and US Circuit Courts of Appeals have made various rulings on the constitutionality of mandatory drug tests in the school and the workplaces. The US courts have been consistent in their rulings that the mandatory drug tests violate a citizen's constitutional right to privacy and right against unreasonable search and seizure. They are quoted extensively hereinbelow.[25]

The essence of privacy is the right to be left alone.[26] In context, the right to privacy means the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities.[27] And while there has been general agreement as to the basic function of the guarantee against unwarranted search, "translation of the abstract prohibition against 'unreasonable searches and seizures' into workable broad guidelines for the decision of particular cases is a difficult task," to borrow from *C. Camara v. Municipal Court*.[28] Authorities

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[24] **Section 1.** No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized.

[25] *Rollo* (G.R. No. 158633), p. 9.

[26] *Ople*, *supra* note 16, at 153; citing Cooley on *Torts*, Sec. 135, Vol. 1, 4th ed., [1932].

[27] 62 Am. Jur. 2d, *Privacy*, Sec. 1.

[28] 387 U.S. 523; cited in 2 Bernas, *supra* note 18, at 232.

are agreed though that the right to privacy yields to certain paramount rights of the public and defers to the state's exercise of police power.[29]

As the warrantless clause of Sec. 2, Art. III of the Constitution is couched and as has been held, "reasonableness" is the touchstone of the validity of a government search or intrusion.[30] And whether a search at issue hews to the reasonableness standard is judged by the balancing of the government-mandated intrusion on the individual's privacy interest against the promotion of some compelling state interest.[31] In the criminal context, reasonableness requires showing of probable cause to be personally determined by a judge. Given that the drug-testing policy for employees — and students for that matter — under RA 9165 is in the nature of administrative search needing what was referred to in *Vernonia* as "swift and informal disciplinary procedures," the probable-cause standard is not required or even practicable. Be that as it may, the review should focus on the reasonableness of the challenged administrative search in question.

The first factor to consider in the matter of reasonableness is the nature of the privacy interest upon which the drug testing, which effects a search within the meaning of Sec. 2, Art. III of the Constitution, intrudes. In this case, the office or workplace serves as the backdrop for the analysis of the privacy expectation of the employees and the reasonableness of drug testing requirement. The employees' privacy interest in an office is to a large extent circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld.

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[29] 62 Am. Jur. 2d, *Privacy*, Sec. 17.

[30] *Vernonia* & *Board of Education*, *supra* notes 15 & 18.

[31] *Skinner v. Railway Labor Executives Assn.*, 489 U.S. 602, 619 (1989); cited in *Vernonia*, *supra*.

Just as defining as the first factor is the character of the intrusion authorized by the challenged law. Reduced to a question form, is the scope of the search or intrusion clearly set forth, or, as formulated in *Ople v. Torres*, is the enabling law authorizing a search "narrowly drawn" or "narrowly focused"?[32]

The poser should be answered in the affirmative. For one, Sec. 36 of RA 9165 and its implementing rules and regulations (IRR), as couched, contain provisions specifically directed towards preventing a situation that would unduly embarrass the employees or place them under a humiliating experience. While every officer and employee in a private establishment is under the law deemed forewarned that he or she may be a possible subject of a drug test, nobody is really singled out in advance for drug testing. The goal is to discourage drug use by not telling in advance anyone when and who is to be tested. And as may be observed, Sec. 36(d) of RA 9165 itself prescribes what, in *Ople*, is a narrowing ingredient by providing that the employees concerned shall be subjected to "random drug test as contained in the company's work rules and regulations x x x for purposes of reducing the risk in the work place."

For another, the random drug testing shall be undertaken under conditions calculated to protect as much as possible the employee's privacy and dignity. As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, *i.e.*, the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the test shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody.[33] In addition, the IRR issued by the DOH provides that access to the drug results

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[32] *Supra* note 16, at 166 & 169.

[33] Under Sec. 7 [3] of the DOH IRR Governing Licensing and Accreditation of Drug Laboratories, a laboratory is required to use documented chain of custody procedures to maintain control and custody of specimens.

shall be on the "need to know" basis;[34] that the "drug test result and the records shall be [kept] confidential subject to the usual accepted practices to protect the confidentiality of the test results."[35] Notably, RA 9165 does not oblige the employer concerned to report to the prosecuting agencies any information or evidence relating to the violation of the *Comprehensive Dangerous Drugs Act* received as a result of the operation of the drug testing. All told, therefore, the intrusion into the employees' privacy, under RA 9165, is accompanied by proper safeguards, particularly against embarrassing leakages of test results, and is relatively minimal.

To reiterate, RA 9165 was enacted as a measure to stamp out illegal drug in the country and thus protect the well-being of the citizens, especially the youth, from the deleterious effects of dangerous drugs. The law intends to achieve this through the medium, among others, of promoting and resolutely pursuing a national drug abuse policy in the workplace via a mandatory random drug test.[36] To the Court, the need for drug testing to at least minimize illegal drug use is substantial enough to override the individual's privacy interest under the premises. The Court can consider that the illegal drug menace cuts across gender, age group, and social- economic lines. And it may not be amiss to state that the sale, manufacture, or trafficking of illegal drugs, with their ready market, would be an investor's dream were it not for the illegal and immoral components of any of such activities. The drug problem has hardly abated since the martial law public execution of a notorious drug trafficker. The state can no longer assume a laid back stance with respect to this modern-day scourge. Drug enforcement agencies perceive a mandatory random drug

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[34] DOH IRR Governing Licensing and Accreditation of Drug Laboratories, Sec. 7 [10.3] provides that the original copy of the test results form shall be given to the client/donor, copy furnished the DOH and the requesting agency.

[35] *Id.,* Sec. 7 [10.4].

[36] Secs. 47 and 48 of RA 9165 charge the Department of Labor and Employment with the duty to develop and promote a national drug prevention program and the necessary guidelines in the work place, which shall include a mandatory drafting and adoption of policies to achieve a drug-free workplace.

test to be an effective way of preventing and deterring drug use among employees in private offices, the threat of detection by random testing being higher than other modes. The Court holds that the chosen method is a reasonable and enough means to lick the problem.

Taking into account the foregoing factors, *i.e.*, the reduced expectation of privacy on the part of the employees, the compelling state concern likely to be met by the search, and the well-defined limits set forth in the law to properly guide authorities in the conduct of the random testing, we hold that the challenged drug test requirement is, under the limited context of the case, reasonable and, *ergo*, constitutional.

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service.[37] And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.[38]

Petitioner SJS' next posture that Sec. 36 of RA 9165 is objectionable on the ground of undue delegation of power hardly commends itself for concurrence. Contrary to its position, the provision in question is not so extensively drawn as to give unbridled options to schools and employers to determine the manner of drug testing. Sec. 36 expressly provides how drug testing for students of secondary and tertiary schools and officers/employees of public/private offices should be conducted. It enumerates the persons who shall undergo drug testing. In the case of students, the testing shall be in accordance with the school rules as contained in the student handbook and with

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[37] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICERS AND EMPLOYEES, Sec. 2.

[38] CONSTITUTION, Art. XI, Sec. 1.

notice to parents. On the part of officers/employees, the testing shall take into account the company's work rules. In either case, the random procedure shall be observed, meaning that the persons to be subjected to drug test shall be picked by chance or in an unplanned way. And in all cases, safeguards against misusing and compromising the confidentiality of the test results are established.

Lest it be overlooked, Sec. 94 of RA 9165 charges the DDB to issue, in consultation with the DOH, Department of the Interior and Local Government, Department of Education, and Department of Labor and Employment, among other agencies, the IRR necessary to enforce the law. In net effect then, the participation of schools and offices in the drug testing scheme shall always be subject to the IRR of RA 9165. It is, therefore, incorrect to say that schools and employers have unchecked discretion to determine how often, under what conditions, and where the drug tests shall be conducted.

The validity of delegating legislative power is now a quiet area in the constitutional landscape.[39] In the face of the increasing complexity of the task of the government and the increasing inability of the legislature to cope directly with the many problems demanding its attention, resort to delegation of power, or entrusting to administrative agencies the power of subordinate legislation, has become imperative, as here.

Laserna Petition (Constitutionality of Sec. 36[c], [d], [f], and [g] of RA 9165)

Unlike the situation covered by Sec. 36(c) and (d) of RA 9165, the Court finds no valid justification for mandatory drug testing for persons accused of crimes. In the case of students, the constitutional viability of the mandatory, random, and suspicionless drug testing for students emanates primarily from the waiver by the students of their right to privacy when they seek entry to the school, and from their voluntarily submitting their persons to the parental authority of school authorities. In

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[39] *Tatad, supra* note 6, at 351.

the case of private and public employees, the constitutional soundness of the mandatory, random, and suspicionless drug testing proceeds from the reasonableness of the drug test policy and requirement.

We find the situation entirely different in the case of persons charged before the public prosecutor's office with criminal offenses punishable with six (6) years and one (1) day imprisonment. The operative concepts in the mandatory drug testing are "randomness" and "suspicionless." In the case of persons charged with a crime before the prosecutor's office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy.[40] To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 9165. Drug testing in this case would violate a person's right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.

WHEREFORE, the Court resolves to *GRANT* the petition in G.R. No. 161658 and declares *Sec. 36(g) of RA 9165* and *COMELEC Resolution No. 6486* as *UNCONSTITUTIONAL*; and to *PARTIALLY GRANT* the petition in G.R. Nos. 157870 and 158633 by declaring *Sec. 36(c) and (d) of RA 9165 CONSTITUTIONAL*, but declaring its *Sec. 36(f) UNCONSTITUTIONAL*. All concerned agencies are, accordingly, permanently enjoined from implementing *Sec. 36(f) and (g) of RA 9165*. No costs.

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[40] *Leona Pasion Viuda de Garcia v. Locsin*, 65 Phil. 689, 695 (1938); citing Cooley, CONST. LIM. 630 (8th ed.).

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 169047. November 3, 2008]

EVA FLOYD and RODOLFO CALIXTRO, *petitioners, vs.* **BENJAMIN GONZALES, ATILANO NANQUIL, LINDA NISPEROS, LILIAN NISPEROS, SALVADOR NISPEROS & VIRGILIO CONSTANTINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; AN ACTION *IN PERSONAM*. — An ejectment suit is an action *in personam* wherein judgment is binding only upon parties properly impleaded and given an opportunity to be heard. Petitioners were not made party-defendants by the Nisperoses. Hence, they can be bound by said judgment in the ejectment suit, even if they were not impleaded as defendants, only if they are shown to be (a) trespassers, squatters or agents of the defendant fraudulently occupying the property to frustrate the judgment; (b) guests or other occupants of the premises with the permission of the defendant; (c) transferees *pendente lite*; (d) sub-lessees; (e) co-lessees; or (f) members of the family, relatives and other privies of the defendant. In such cases, court hearing is a must to determine the character of such possession. If the execution court finds that they are mere successors-in–interest, guests, or agents of the defendants, the order of execution shall be enforced against them.

2. ID.; PROVISIONAL REMEDIES; INJUNCTION; WRIT OF PRELIMINARY INJUNCTION; WHEN ISSUED; CASE AT BAR. — A writ of preliminary injunction may only be issued upon a clear showing that there exists a right to be protected and that the action sought to be enjoined is violative of that right. From the foregoing discussion, it is clear that petitioners have a right to be protected against the summary demolition of their houses. Hence, the RTC correctly issued a writ of preliminary injunction. However, whether the injunction should be made permanent is another matter.

3. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; POSSESSION; PRONOUNCEMENT OF THE COURT IN *PAJUYO v. COURT OF APPEALS* ON THE MATTER OF EJECTMENT AND POSSESSION. —Applicable to the instant case, which is an offshoot of an ejectment case and which also in part partakes of an ejectment case, is the following pronouncement of the Court on the matter of ejectment and possession in *Pajuyo v. Court of Appeals*. The only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.

APPEARANCES OF COUNSEL

Demetrio M. Leaño for petitioners.
Mendoza Law Office for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* seeks to reverse the Decision[1] dated July 12, 2005 of the Court of Appeals in CA-G.R. CV No. 81618. Said Decision affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 45, San Fernando City, Pampanga in SP. Civil Action No. 234-0-91, dismissing the complaint for injunction which sought to prevent the demolition of petitioners' houses built on the land claimed by respondents Linda Nisperos, Lilian Nisperos and Salvador Nisperos.

The facts, as culled from the records, are as follows.

Petitioners Eva Floyd and Rodolfo Calixtro are occupants of a lot in Jolo Street, Tabacuhan Road, Sta. Rita, Olongapo City. Floyd started occupying the said lot in 1986 while Calixtro started doing so in 1988. The lot forms part of a 1,337.50-square meter property which was the subject of a complaint[3] for forcible entry filed by respondents Lilian Nisperos, Linda Nisperos and Salvador Nisperos, through their attorney-in-fact Virgilio Constantino, against Clemente Abarnas. The complaint, filed on September 25, 1984, charged Abarnas of constructing a house on the subject land in July 1984 through stealth and strategy. The Nisperoses claimed ownership and prior possession of the land by succession, alleging that their father, Igmedio Nisperos, occupied and tilled it from 1950 to 1982.

On February 10, 1986, the Municipal Trial Court in Cities of Olongapo City dismissed the ejectment complaint. On appeal however, the Olongapo City RTC on January 20, 1987 reversed the dismissal of the complaint and ordered Abarnas to remove

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[1] *Rollo*, pp. 33-42. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring.

[2] Records, pp. 528-537. Penned by Judge Adelaida Ala-Medina. Dated August 8, 2003.

[3] Civil Case No. 2467.

any improvements introduced on the land and surrender possession thereof to the Nisperoses.[4]

On July 8, 1987, the Court of Appeals affirmed the Olongapo City RTC's Decision.[5] When the appellate court's decision attained finality, the Olongapo City RTC issued an *Alias* Writ of Execution[6] on April 3, 1991 and an *Alias* Writ of Special Demolition[7] on April 4, 1991. A Notice to Vacate[8] was likewise issued on April 23, 1991.

In June 1991, when respondents Sheriffs Benjamin Gonzales and Atilano Nanquil went to the subject land to implement the writs, they found that petitioners and Fe Ongsotto were also occupying the property. To prevent the demolition, petitioners and Ongsotto filed a complaint[9] for injunction, SP. Civil Action No. 234-0-91, before the RTC of Olongapo City.

On February 5, 1992, the RTC of Olongapo City issued a Writ of Preliminary Injunction.[10] It observed that petitioners do not appear to be mere trespassers, squatters or Abarnas' agents; and that the respondent sheriffs exceeded their authority granted by the writs of execution and demolition, considering that they were only directed against Abarnas.[11]

The complaint was transferred to the RTC of San Fernando City by virtue of Supreme Court A.M. No. 00-11-523-RTC, following a judicial audit.

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[4] Records, pp. 186-189. Penned by Judge Esther Nobles Bans.

[5] *Id.* at 190-197. Penned by Associate Justice Bonifacio A. Cacdac, Jr., with Associate Justices Esteban M. Lising and Ricardo L. Pronove, Jr., concurring.

[6] CA *rollo*, pp. 89-90.

[7] *Id.* at 91-92.

[8] Records, p. 111.

[9] *Id.* at 1-4.

[10] *Id.* at 139-140.

[11] *Id.* at 120-122.

On August 8, 2003, the RTC of San Fernando City, dismissed the injunction complaint. It considered petitioners as occupants in bad faith and squatters on the lots, making the judgment in the ejectment case binding on them. The court recognized the Nisperoses' prior possession and claim over the lots which started in 1950 with their father, Igmedio. The RTC noted that Floyd and Calixtro admitted that they started occupying the premises only in 1986 and 1988, respectively. It also concluded that petitioners impliedly admitted that the lots are part of the Nisperoses' property because instead of claiming the opposite, they attempted to prove that they had a better right thereto. It also ordered petitioners to pay private respondents moral damages and attorney's fees.[12]

Petitioners and Ongsotto, separately, appealed the judgment in the injunction case before the Court of Appeals.

On July 12, 2005, the appellate court ruled against petitioners, thus:

> WHEREFORE**,** upon the premises, the appealed Decision is ***AFFIRMED with the MODIFICATION*** that the awards of moral damages and attorney's fees are *DELETED*.
>
> SO ORDERED.[13]

The Court of Appeals held that petitioners have not shown a clear and unmistakable right to be protected, and found that they occupied the land during the pendency of the ejectment case, thereby taking advantage of such conflict.[14]

On August 22, 2005, Ongsotto, alone, filed a Motion for Reconsideration.[15] On September 21, 2005, Floyd and Calixtro filed the instant petition.[16] On February 15, 2006, the Court of

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[12] *Id.* at 528-537.

[13] CA *rollo*, p. 114.

[14] *Id.* at 112-113.

[15] *Id.* at 122-127.

[16] *Id.* at 141-152.

Appeals deferred ruling on Ongsotto's motion in view of this petition.[17]

Before us, petitioners raise the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION IN CIVIL CASE NO. 234-0-91 HOLDING THAT THE PETITIONERS ARE BOUND BY THE DECISION IN CIVIL CASE NO. 139-0-86 ALTHOUGH THEY WERE NOT IMPLEADED AS PARTY DEFENDANTS THEREIN.

II.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONERS ARE NOT ENTITLED TO A WRIT OF INJUNCTION ALTHOUGH THE PROPERTY THEY ARE IN POSSESSION OF IS OWNED AND TITLED IN THE NAME OF ANOTHER PERSON.

III.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE LAND SUBJECT OF CIVIL CASE NO. 139-0-86 INCLUDES THE LOTS BEING OCCUPIED AND POSSESSED BY THE PETITIONERS.[18]

Simply stated, the issues are as follows: Are petitioners bound by the decision in the ejectment case? Are they entitled to an injunctive writ to prevent the demolition of their houses? Who has a better right of possession over the land where their houses are erected?

Petitioners aver that only Abarnas was ordered by the Olongapo City RTC to surrender possession of the land and remove any construction thereon, and that they are not trespassers, squatters, or Abarnas' relatives, successors-in-interest, or privies. They further contend that judgments in ejectment cases are *in personam.* Thus, even assuming that they are occupying the premises subject of the ejectment case, the judgment cannot be enforced against

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[17] *Id.* at 185-186.

[18] *Rollo,* pp. 11-12.

them as they were not made parties to it. Petitioners likewise point to several pieces of documentary evidence which allegedly show that the Nisperoses are not the true owners of the lots on which the houses sought to be demolished stand, since said lots are registered in the name of one Rodrigo C. Domingo, Jr. They further argue that there is no factual basis for the appellate court's finding that they impliedly admitted that the lots they are occupying form part of the property claimed by the Nisperoses.[19]

The Nisperoses on the other hand state that petitioners were not impleaded as defendants in the ejectment case as the latter were not yet on the premises "or hid themselves" during the pendency of the case until the time the latter were served with a notice to vacate on December 21, 1988. They claim that petitioners connived with Abarnas and his wife Angelina, and insist that petitioners are privies of the Abarnases. They accuse petitioners of bad faith in applying for a Miscellaneous Sales Application and for belatedly securing other documents, which were "self-serving." Lastly, they aver that the genuineness of the documents presented by petitioners and the ownership of the lots mentioned in it can only be determined in a full-blown trial.[20]

An ejectment suit is an action *in personam* wherein judgment is binding only upon parties properly impleaded and given an opportunity to be heard.[21] Petitioners were not made party-defendants by the Nisperoses. Hence, they can be bound by said judgment in the ejectment suit, even if they were not impleaded as defendants, only if they are shown to be (a) trespassers, squatters or agents of the defendant fraudulently occupying the property to frustrate the judgment; (b) guests or other occupants of the premises with the permission of the defendant; (c) transferees *pendente lite*; (d) sub-lessees; (e) co-lessees; or (f) members

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

[20] *Id.* at 59-61.

[21] *Biscocho v. Marero*, A.M. No. P-01-1527, April 22, 2002, 381 SCRA 430, 432.

of the family, relatives and other privies of the defendant.[22] In such cases, court hearing is a must to determine the character of such possession. If the execution court finds that they are mere successors-in-interest, guests, or agents of the defendant, the order of execution shall be enforced against them.[23]

In the forcible entry case, petitioners had not been given their day in court to present their side to prove their alleged *bona fide* possession. Neither was a court hearing held to prove that they are mere successors-in-interest, guests, or agents of defendant Abarnas when the ejectment judgment was sought to be enforced against them. Thus, they cannot be bound by the decision in the ejectment case.

We now go to the second issue.

A writ of preliminary injunction may only be issued upon a clear showing that there exists a right to be protected and that the action sought to be enjoined is violative of that right.[24] From the foregoing discussion, it is clear that petitioners have a right to be protected against the summary demolition of their houses. Hence, the RTC correctly issued a writ of preliminary injunction. However, whether the injunction should be made permanent is another matter.

The determination as to whether petitioners are entitled to a permanent injunction rests on the issue of who between petitioners and respondents have a better right of possession over the land on which the houses sought to be demolished stand.

It is relevant to point out that in the pre-trial conference before the Olongapo City RTC the parties agreed on the following issues for resolution:

(1) Whether or not the plaintiffs were mere trespassers in the property in question or do they have title over the premises in question.

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[22] *Equitable PCI Bank v. Ku*, G.R. No. 142950, March 26, 2001, 355 SCRA 309, 312.

[23] *Gozon v. De la Rosa*, 77 Phil. 919, 921 (1947).

[24] *Tan v. Mueco*, G.R. No. 141540, October 26, 2001, 368 SCRA 429, 435.

(2) Whether or not the plaintiffs can be ejected or their house demolished erected on the land in question inasmuch as they are not parties in the case of *Linda Nisperos, et al. versus Rodolfo Calixtro and Fe Ongsotto*, Civil Case No. 139-0-86.
(3) Whether or not the spaces which plaintiffs' houses are erected are owned by plaintiffs.[25]

Clearly, apart from the matter of enjoining the execution against petitioners of the judgment in Civil Case No. 139-0-86, the issue of who between the petitioners and respondents are entitled to possession of, as a consequence of title over, the land where the formers' houses are erected was also squarely raised and fully tried before the lower courts. During trial, petitioners fully ventilated their claim/right to possession of the subject land. Sec. 5, Rule 10 of the Rules of Court states that "[w]hen issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Under the circumstances, it is just and proper to resolve the issue of possession over the subject land. To rule otherwise and require respondents to file another case for ejectment, or institute supplemental proceedings in Civil Case No. 139-0-86, against petitioners would not be in accord with justice and would only entail more unnecessary expenses and contribute to the clogged court dockets.

Both the RTC and the Court of Appeals categorically found that respondents have the better right to possession of the land. The RTC ruled that "[petitioners'] claim of possession that started in 1988 must … yield to that of the Nisperoses who trace their possession of the property to that of their predecessor-in-interest, their father Igmedio who began occupying the property in 1950."[26] The Court of Appeals, for its part, ruled that:

…[Petitioner] Floyd occupied the property only in 1986; [petitioner] Calixtro occupied the property in 1988 while admitting that the property was owned by I. Hauseco Subd. Appellant Ongsotto likewise

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[25] Records, pp. 227-228. See also the RTC Decision, records, p. 531.

[26] *Id.* at 533.

occupied the property in 1988 and expressed that she derived her alleged title from a waiver and quitclaim executed by Angelina Abarnas, the wife of . . . Clemente Abarnas, defendant in the ejectment case. Thus, she is considered as the latter's successor-in-interest, bound by the judgment in the ejectment case which is conclusive between the parties and their successors-in-interest. The MSAs [Miscellaneous Sales Applications] and unapproved survey plans presented by . . . Floyd and Ongsotto are self-serving and of little evidentiary value.

In sum, the [petitioners] have not proved a clear and unmistakable right to the possession of the property. On the other hand, Nisperos' better right was established by final judgment in Civil Case No. 139-0-86 . . .[27]

We find no cogent reason to overturn the consistent findings of both the RTC and the Court of Appeals that, as against petitioners, the Nisperoses are entitled to possession of the subject land where the petitioners' houses are erected. Applicable to the instant case, which is an offshoot of an ejectment case and which also in part partakes of an ejectment case, is the following pronouncement of the Court on the matter of ejectment and possession in *Pajuyo v. Court of Appeals*:[28]

The only question that the courts must resolve in ejectment proceedings is–who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession

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[27] CA *rollo*, p. 113.

[28] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[29]

Petitioners Floyd and Calixtro, in SP. Civil Action No. 234-0-91 admitted having possessed the subject land only in 1986 and 1988 respectively. These cannot prevail over the Nisperoses' possession through their father Igmedio that started in 1950. Since the Nisperoses have proven prior possession in time, they indeed have a better right to the possession of the land. Hence, petitioners must relinquish possession of the land to the Nisperoses and accordingly remove their houses which are built on the subject land.

WHEREFORE, the Decision dated July 12, 2005 of the Court of Appeals in CA-G.R. CV No. 81618 is *AFFIRMED with MODIFICATION*. Petitioners are *ORDERED* to *SURRENDER* to the respondents Linda, Lilian and Salvador Nisperos the possession of the land in dispute and *REMOVE* the improvements that they introduced thereon.

Costs against petitioners.

SO ORDERED.

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

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[29] *Id.* at 510-511.

SECOND DIVISION

[G.R. No. 173248. November 3, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANTE NUEVA *y* SAMARO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MATTER BEST LEFT TO THE DETERMINATION OF THE TRIAL COURT. — Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court because it had the unique advantage of having personally observed the witnesses, their demeanor, conduct, and attitude. As a consequence, we have considered the trial court's assessment of the credibility of witnesses to be binding except when the lower court had patently overlooked facts and circumstances of weight and influence that could alter the results of the case.

2. ID.; ID.; ID.; WHERE NO IMPROPER MOTIVE EXISTS, TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT; CASE AT BAR. — Nor did we see anything on record showing any improper motive that would lead Alfonso to testify as he did. In fact, in his testimony of July 31, 2001, he categorically stated that he had no misunderstanding with the appellant and his two (2) co-accused prior to the stabbing incident. Thus, we adhere to the established rule that in the absence of evidence showing any reason or motive for the prosecution witness to perjure himself or herself, we can conclude that no improper motive exists and his or her testimony is worthy of full faith and credit.

3. ID.; ID.; ALIBI; TO PROSPER, ACCUSED SHOULD PROVE IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME WHEN IT WAS COMMITTED. — Alibi, on the other hand, is one of the weakest defenses in a criminal case and should be rejected when the identity of the accused is sufficiently and positively established by the prosecution. For the appellant's defense of alibi to prosper, he should have proven that it was physically impossible for

him to have been at the scene of the crime when it was committed. By *physical impossibility* we refer to the distance and the facility of access between the *situs criminis* and the place where he says he was when the crime was committed.

4. ID.; ID.; ALIBI AND DENIAL; IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, UNDESERVING OF WEIGHT IN LAW. — In a long line of cases, this Court has held that positive identification, made categorically and consistently, almost always prevails over alibi and denial. These defenses, if not substantiated by clear and convincing evidence, are negative and self-serving and are undeserving of weight in law. We see no reason in this case to deviate from these established rules.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; TWO CONDITIONS WHICH MUST OCCUR. — Treachery is not presumed. The circumstances surrounding the murder must be proved as indubitably as the crime itself. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to insure its execution, without risk to the offender, arising from the defense that the offended party might make. To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) **the offender's deliberate or conscious choice of the means, method or manner of execution**. In *People v. Antonio*, we held that it is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose. Likewise, in *People v. Catbagan*, we ruled that treachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing, or that the death of the victim was the result of premeditation, calculation or reflection.

6. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; CONSTRUED. — We agree, however, that abuse of superior strength attended the killing of the victim. To take advantage of superior strength means to use purposely excessive force, or force out of proportion to the means of defense available to the person attacked. The aggravating circumstance of abuse of superior

strength depends on the age, size and strength of the parties. It is present whenever there is inequality of forces between the victim and the aggressor so that the superiority of strength is notoriously advantageous for the latter who took advantage of this superiority in committing the crime.

7. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS WHICH MUST BE ESTABLISHED. — While evident premeditation was alleged in the Information, the court *a quo* correctly concluded that this circumstance was not proven. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect on the consequences of his act.

8. ID.; CONSPIRACY; PROOF NEED NOT REST ON DIRECT EVIDENCE AS THE SAME MAY BE INFERRED FROM THE CONDUCT OF THE PARTIES. — A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. It may be deduced from the mode and manner by which the offense was perpetrated or inferred from the acts of the accused showing a joint or common purpose and design, concerted action and community of interest.

9. ID.; MURDER; CIVIL LIABILITY; ACTUAL DAMAGES AWARDED IN CASE AT BAR. — The RTC awarded the amount of ₱56,112.00 to the victim's heirs as actual damages. It appears that out of the said amount, only ₱55,438.00 was duly supported by receipts. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.

10. ID.; ID.; ID.; INDEMNITY FOR LOSS OF EARNING CAPACITY; AWARDED IN CASE AT BAR; HOW COMPUTED. — We also award indemnity for loss of earning capacity to the victim's heirs, as documentary evidence was presented to substantiate this claim. Indemnity for loss of earning capacity is determinable under established jurisprudence based on the *net earning capacity* of the murder victim computed under the formula: Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses)

11. ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — The heirs of the victim are likewise entitled to exemplary damages since the qualifying circumstance of abuse of superior strength was firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We review the appeal by accused-appellant Dante Nueva *y* Samaro (*appellant*) from the April 27, 2006 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00727. The CA affirmed the November 12, 2004 Decision[2] of the Regional Trial Court (*RTC*), Branch 129, Caloocan City, finding the appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

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[1] Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justice Jose C. Reyes, Jr. and Associate Justice Arturo G. Tayag; *rollo*, pp. 2-11.

[2] Penned by Presiding Judge Thelma Canlas Trinidad-Pe Aguirre; CA *rollo*, pp. 53-68.

ANTECEDENT FACTS

The prosecution charged the appellant, Porpirio Maribuhok (*Porpirio*) and John Doe, one of the as yet unidentified assailants, before the RTC with the crime of murder under an Information that states:

x x x x x x x x x

That on or about the 29th day of December, 2000 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without any justifiable cause, and with deliberate intent to kill with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit with a piece of wood on the head and stab at the back and chest one VIRGILIO REVOLLIDO, JR. *Y* ANTOLIN, with a bladed weapon, thereby inflicting upon the latter serious physical injuries, which eventually caused his death.

Contrary to law.[3]

Of the three accused, only the appellant was apprehended; the others remained at large. On arraignment, the appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Virgilio Revollido, Sr. (*Virgilio*); Alfonso Bacar, Jr. (*Alfonso*); PO3 Jaime Basa (*PO3 Basa*); Dr. Ludivino G. Lagat (*Dr. Lagat*); PO2 Edilberto Safuentes (*PO2 Safuentes*); SPO1 Renato Aguilar (*SPO1 Aguilar*); and Mariadita Revollido-Baytan (*Mariadita*). The appellant took the witness stand for the defense.

Virgilio, the father of the victim, testified that her daughter, Annabelle Revollido, informed him in the morning of December 30, 2000 of his son's death.[4] At the time he died, his son was 31 years old[5] and was single; he received a monthly pay of about ₱5,000.00 as a machine operator in Vitan Industries.[6] He affirmed

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[3] Records, p. 2.

[4] TSN, July 11, 2001, p. 4.

[5] *Id.*, p. 9.

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

that he incurred more than ₱60,000.00 for the wake and burial of his son.[7]

Alfonso narrated that at around 10:00 in the evening of December 29, 2000, while he was standing outside the Great Taste Bakery located on 4th Avenue East, Caloocan City, he saw a person coming from M.H. Del Pilar Street being chased by another (*John Doe*). Upon reaching 4th Avenue, the person being chased passed in front of the appellant and Porpirio who were then standing near the corner of 4th Avenue. At that point, the appellant held the victim's left hand and led him to the other side of the road. There, Porpirio took a piece of wood and hit the victim on the head, causing the latter to fall to his knees. The appellant continued to box the victim until John Doe came.[8] John Doe immediately stabbed the victim at the back. The appellant, who was then at the victim's front, then pulled out a knife and likewise stabbed the victim. Afterwards, the three accused ran towards M.H. Del Pilar Street. The victim stood up, but, after taking two (2) steps, fell to the ground. Thereafter, an unidentified person came and brought the victim to a hospital on board a van. [9]

Alfonso testified further that he was informed of the full name of the victim on January 19, 2001 by the latter's relatives after he gave his statement to the police authorities.[10]

On cross examination, he narrated that he was more or less 7 to 8 arms length away from the place of the incident, and that the place at that time was well-lighted.[11]

PO3 Basa, a police officer assigned at the Caloocan Police Headquarters, testified that on December 29, 2000, he received a verbal communication from the PNP Tactical Operation Center

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[7] *Id.*, pp. 5-6.

[8] TSN, July 31, 2001, pp. 3-5.

[9] *Id.*, pp. 6-7.

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

[11] *Id.*, pp. 15-16.

of a stabbing incident at M.H. Del Pilar Street. He went to the scene of the crime and was informed there by bystanders that the victim had been brought to the Chinese General Hospital. He proceeded to the emergency room of the hospital and saw the lifeless body of the victim who bore several stab wounds.[12]

Dr. Lagat, the Medico-Legal Officer of the National Bureau of Investigation, declared on the witness stand that he conducted an autopsy on the remains of the victim on December 30, 2000 and made the following findings:

x x x x x x x x x

Abrasions: 1.0 x 1.3 cm., shoulder, left 4.0 x 2.0 cm., back, left side, 4.0 x 1.0 cm., back, right side; 5.0 x 1.0 cm., antecubital area, left; 2 x 1.0 cm. right knee.

Incised wounds, 3.0 cm., forehead, right side; 3.0 cm., chest, right side, 5.0 cm., left supra scapular area; 6.0 cm., left hand, back; 3.0 cm., right ring finger.

Stab wounds, all elliptical; clean cut edges, with sharp and a blunt extremities.

1. 1.0 cm., obliquely oriented, located at the lateral aspect of the neck; left side; 10.0 cm., from the anterior median line directed backward and medially involving the skin and soft tissue arteriorly.

2. 3.5 cm., obliquely oriented; located at the anterior chest wall, left side 4.0 cm., from the anterior median line, level of the 4th intercostal; directed backward, downward and medially involving the skin underlying soft tissue; perforating the pericardial sac; penetrating the left ventrical of the heart, with a depth of 13.0 cms.

3. 4.5 cms., obliquely oriented; located at the anterior chest wall, right side; 3.0 cms., from the anterior median line, level of the 5th intercostals; directed backward; downward and medially, involving the skin and underlying soft tissue; then penetrating the middle lobe of the right lobe with depth of 12.0 cms.

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[12] TSN, August 28, 2001, pp. 4-5.

x x x x x x x x x

CAUSE OF DEATH: STAB WOUNDS, BODY.

x x x x x x x x x[13]

According to Dr. Lagat, the victim suffered three (3) stab wounds, eight (8) incise wounds, and several abrasions in different parts of his body. Of the three stab wounds, two (2) were fatal, both of them at the chest.[14]

PO2 Safuentes of the Mobile Patrol Division, Caloocan City Police, stated that he was one of the police officers who apprehended the appellant. According to him, he and his five (5) companions went to Letre, Tonsuya, Malabon to serve the arrest warrant on the appellant who was not in his house at the time.[15] On their way out of Letre, they chanced upon the accused who, on seeing them, turned his back and ran. PO1 Chu[16] fired two (2) warning shots, causing the appellant to stop. PO2 Safuentes showed him (appellant) then the corresponding warrant of arrest and then brought him to the hospital for mandatory physical examination.[17]

SPO1 Aguilar was with the arresting team and essentially confirmed what PO2 Safuentes testified on.[18]

Mariadita, the victim's sister, confirmed that she identified and requested an autopsy of her brother's remains.[19]

The appellant had a different version of the events. His testimony was succinctly summarized by the RTC as follows:

x x x Dante Nueva *y* Samaro testified that on December 29, 2000, at around 10:00 o'clock in the evening, he was at work as bouncer

[13] Records, p. 72.

[14] TSN, September 13, 2001, p. 7.

[15] TSN, October 16, 2001, pp. 3-6.

[16] In some parts of the records, his name appears as PO1 Tiu.

[17] TSN, October 16, 2001, pp. 7-9.

[18] TSN, December 12, 2001, pp. 5-13.

[19] TSN, January 21, 2002, p. 4.

at Yellow Submarine with one Wilmor that was from 10:00 p.m. to 3:00 a.m. He does not know of any untoward or stabbing incident in his working place.

He said he does not know of any reason why he is being charged with murder.[20]

He likewise narrated that he knows a person by the name of Porpirio Maribuhok, one of the accused in this case who is a customer at Yellow Submarine. He did not see Porpirio Maribuhok at the night of the incident.[21]

On cross by Pros. Susano, said accused testified that he knows for 3 months already [sic] Porpirio Maribuhok who is a customer of the Yellow Submarine near M.H. del Pilar St., which place is around 30/40 meters away from Great Taste Bakery.[22]

He said that yellow Submarine is owned by one Maring Rinos whom he knows for three (3) years already. He also knows one Edgar, Entoy, Val and Leo.[23] [*Footnotes referring to the pertinent parts of the record supplied*]

The RTC convicted the appellant in its decision of November 12, 2004. The dispositive portion of this decision reads:

WHEREFORE, accused Dante Nueva *y* Samaro, is hereby found **Guilty**, beyond reasonable doubt of Murder, qualified by treachery, and is sentenced to ***Reclusion Perpetua***. Accused is ordered to pay the heirs of the victim, Virgilio Revollido, Jr., ₱50,000.00 as civil indemnity *ex delicto*; to pay the heirs of the victim, Fifty Six Thousand One Hundred Twelve (₱56,112.00) Pesos as actual damages.

In the absence of proof to prove loss of earning capacity, the same is disallowed.

x x x x x x x x x

Let *alias* warrant of arrest be issued against the accused Porpirio Maribuhok.

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[20] TSN, October 6, 2004, pp. 6-8.

[21] *Id.*, pp. 8-9.

[22] *Id.*, pp. 11-14.

[23] *Id.*, pp. 14-16.

In the interim, the case against him is Archived, until his arrest.

SO ORDERED.[24] [*Emphasis in the original*]

The appellant appealed his conviction to the CA[25] whose decision of April 27, 2006 affirmed the RTC decision with modification. The CA ordered the appellant to additionally pay the victim's heirs the amounts of ₱50,000.00 and ₱25,000.00 as moral and exemplary damages, respectively.

In his brief,[26] the appellant argues that the lower court erred in finding him guilty of the crime charged despite the failure of the prosecution to establish his guilt beyond reasonable doubt. He posits that the prosecution merely established that a person was killed, but failed to prove beyond reasonable doubt that it was he who killed the victim.

THE COURT'S RULING

After due consideration, we resolve to deny the appeal but modify the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

A distinguishing feature of this case is the presence of an eyewitness – Alfonso – who provided positive identification of the appellant in his July 31, 2001 testimony. To directly quote from the records:

FISCAL NEPTHALI ALIPOSA:

Q: Mr. Bacar, can you recall where were you on the evening of December 29, 2000, particularly at around 10:00 in the evening, more or less?

ALFONSO BACAR, JR.:

A: Yes, sir.

Q: Where were you?

A: I was at Great Taste Bakery, sir.

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[24] CA *rollo*, pp. 34-35.

[25] Docketed as CA-G.R. CR-HC No. 00727.

[26] CA *rollo*, pp. 42-52.

Q: This bakery, where is this located?

A: At 4th Avenue East, Caloocan City.

Q: Outside or inside Great Taste Bakery?

A: Outside, sir.

Q: While outside Great Taste Bakery, do you remember of any unusual incident that happened?

A: Yes, sir.

Q: What was that unusual incident?

A: Somebody was chasing someone coming from M.H. Del Pilar St.

Q: How many persons who [*sic*] were running after someone?

A: One is chasing somebody, sir.

Q: What happened to that pursuit of one man with another man?

A: When the person being chased reached 4th Avenue coming from M.H. Del Pilar and facing in front of two persons standing near the corner, then **Dante Nueva held the left arm of the one running.**

Q: What happened after Dante held the left arm of the man being pursued?

A: Then they proceeded to the other corner or turned around to the other corner.

Q: **They turned around because Dante held the left arm of the person being pursued?**

A: Yes, sir.

Q: When they reached the other side of the road, what happened?

A: Porpirio took a piece of wood (dos por dos) and he hit the person being chased on the head.

Q: When Porpirio hit the head of the person being pursued, what was Dante Nueva doing in relation to the victim, if any?

A: **Dante Nueva boxed first the person being chased until the person who was chasing arrived.**

Q: You said that the person being pursued was being hit by a piece of wood on the head, what happened to the person being hit on the head?

A: The person being chased was hit on the head with a piece of wood fell on his knees.

Q: While the victim who was hit on the head was on a kneeling position, what happened?

A: While the person who was hit on the head fell on his knees, the person who was chasing him arrived.

Q: What happened when the person chasing the victim arrived?

A: Then that person stabbed the person being chased at the back who was then kneeling.

Q: Where was Dante at that time when the victim was hit by that person pursuing at the back?

A: **Dante was there in front of the victim.**

Q: What happened after the victim was stabbed at the back, what did Dante do, if any?

A: **Dante pulled out a knife and stabbed the victim on the front portion of the body and at the same time the other person was stabbing the victim.**

Q: **With what weapon did Dante use in stabbing the victim on the front part of the body?**

A: A fan knife, sir.

Q: How about the other person who was pursuing the victim and who stabbed first the victim at the back, do you know what weapon was being used by this person?

A: I don't know what weapon was that, because upon arrival of this person, he immediately stabbed the victim.

Q: What happened to the victim who was conspired upon by the 3 persons Dante Nueva, Porpirio and the person who stabbed the victim at the back?

ATTY. JIMMY EDMUND BATARA:

We object, Your Honor, conspire is already a conclusion.

COURT:

What is again the question?

STENOGRAPHER:

What happened to the victim who was conspired upon by the 3 persons, Dante Nueva, Porpirio and the person who stabbed the victim at the back?

COURT:

Successively attacked.

FISCAL NEPTHALI ALIPOSA:

Yes, Your Honor, successively attacked.

ALFONSO BACAR, JR.:

He was kneeling while he was being stabbed or while they were stabbing that victim all at the same time and that person being stabbed by the 3 persons also tried to parry the stabbing.

Q: What happened to him?

A: Then after that or after the stabbing of the victim, they ran away and went towards the direction of MH Del Pilar.

x x x x x x x x x

Q: These 3 persons who attacked the victim one on the head, one of them stabbed the victim at the back and the other in front, are they inside the Courtroom now?

A: Only one is inside, sir.

Q: Will you kindly point to the one who was or who is now inside this room?

A: That person sir.

INTERPRETER:

Witness is pointing to a person who identified himself as Dante Nueva.[27] [*Emphasis supplied*]

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[27] TSN, July 31, 2001, pp. 3-7, 11.

Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court because it had the unique advantage of having personally observed the witnesses, their demeanor, conduct, and attitude. As a consequence, we have considered the trial court's assessment of the credibility of witnesses to be binding except when the lower court had patently overlooked facts and circumstances of weight and influence that could alter the results of the case.[28]

We carefully scrutinized the records of this case and found no reason to disbelieve Alfonso's straightforward narration of the events surrounding the death of the victim. Nor did we see anything on record showing any improper motive that would lead Alfonso to testify as he did. In fact, in his testimony of July 31, 2001, he categorically stated that he had no misunderstanding with the appellant and his two (2) co-accused prior to the stabbing incident. Thus, we adhere to the established rule that in the absence of evidence showing any reason or motive for the prosecution witness to perjure himself or herself, we can conclude that no improper motive exists and his or her testimony is worthy of full faith and credit.[29] Moreover, Alfonso testified that he knew the appellant prior to the stabbing incident for more or less four (4) years already; hence there could not have been any doubt regarding his positive identification of the appellant as one of the assailants.

In his defense, the appellant claimed the defenses of denial and alibi. He denied knowing the victim and insisted that he was at the Yellow Submarine bar on 4th Avenue/Del Pilar St. on December 29, 2000; he was there working as a bouncer from 10:00 p.m. to 3:00 a.m. He explained that he failed to get a certification from Yellow Submarine to prove that he was working at that time because no one visited him.

To be believed, denial must be supported by strong evidence of non-culpability; otherwise, it is purely self-serving.[30] Alibi,

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[28] *People v. Dee*, G.R. Nos. 115251-52, October 5, 2000, 342 SCRA 115.

[29] *People v. Rada*, G.R. No. 128181, June 10, 1999, 308 SCRA 191.

[30] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649.

on the other hand, is one of the weakest defenses in a criminal case and should be rejected when the identity of the accused is sufficiently and positively established by the prosecution.[31] For the appellant's defense of alibi to prosper, he should have proven that it was physically impossible for him to have been at the scene of the crime when it was committed. By *physical impossibility* we refer to the distance and the facility of access between the *situs criminis* and the place where he says he was when the crime was committed.[32]

The appellant fails this test as he insisted that he was at the Yellow Submarine working as a bouncer at the time of the stabbing incident. By his own admission, the Yellow Submarine is only 30 to 40 meters from the Great Taste Bakery. This short distance does not render it physically impossible for the appellant to have been at the place where the victim was attacked.

Aside from being inherently weak, the appellant's alibi cannot prevail over the positive identification made by Alfonso that the appellant was one of the victim's assailants. We particularly note that Alfonso categorically stated that he stabbed the victim from the front,[33] and note as well that the victim's two fatal wounds were his chest wounds.[34] Thus, of the three assailants, it was the appellant himself who delivered the fatal blows on the victim.

In a long line of cases, this Court has held that positive identification, made categorically and consistently, almost always prevails over alibi and denial. These defenses, if not substantiated by clear and convincing evidence, are negative and self-serving and are undeserving of weight in law.[35] We see no reason in this case to deviate from these established rules.

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[31] *People v. Dee, supra,* at p. 126.

[32] *People v. Visperas, Jr.*, G.R. No. 147315, January 13, 2003, 395 SCRA 128.

[33] TSN, July 31, 2001, p. 6.

[34] TSN, September 31, 2001, p. 7.

[35] See *People v. Zamora*, G.R. No. 101829, August 21, 1997, 278 SCRA 60.

The crime committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

> Article 248. *Murder*. — Any person who, not falling within the provision of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
>
> x x x x x x x x x

a. No treachery

In convicting the appellant of the crime of murder, the courts *a quo* appreciated the qualifying circumstance of treachery. According to the RTC, "the attack was sudden and not provoked, and was not preceded by any exchange of words, no altercation between the assailants and the victim, who was not aware that he would be killed by the accused. x x x [A]ccused stabbed the victim in succession even when he was already on the ground, wounded."[36] The CA concurred with this RTC finding of treachery without however offering any explanation for its concurrence.

We disagree with the lower courts in this conclusion as our review of the evidence points us to the conclusion that no treachery existed.

Treachery is not presumed. The circumstances surrounding the murder must be proved as indubitably as the crime itself.[37] There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to insure its execution, without risk to the offender, arising from the defense that the offended party might make.[38]

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[36] RTC decision, CA *rollo*, p. 33.

[37] *People v. Ilo*, G.R. No. 140731, November 21, 2002, 392 SCRA 326, 331.

[38] ART. 14, par. 16 of the Revised Penal Code.

To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) **the offender's deliberate or conscious choice of the means, method or manner of execution**.[39]

We find it undisputed that prior to the killing, the victim was being chased by John Doe. Upon reaching 4th Avenue, he passed in front of the appellant and Porpirio who, at that time, were both standing near the corner of 4th Avenue. As the victim passed, the appellant held his left hand and led him towards the other side of the road. There, Porpirio struck the victim on the head with a *dos por dos* causing him to fall to his knees. The appellant thereafter boxed the victim until John Doe came. They then stabbed him, John Doe delivering the first blow from the back and the appellant doing it from the front.

Under these facts, we see no evidence indicating that the appellant and his co-accused **made some preparation** to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the victim to defend himself.[40] There was nothing in the record that shows that the three (3) assailants carefully considered the mode or method of attack to ensure the killing of the victim. While the intent to kill was patent, the manner of attack did not appear to have been deliberately adopted.

In *People v. Antonio*,[41] we held that it is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose.

Likewise, in *People v. Catbagan*,[42] we ruled that treachery cannot be considered when there is no evidence that the accused

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[39] *People v. Garcia*, G.R. No. 174479, June 17, 2008.

[40] *People v. Nitcha*, G.R. No. 113517, January 19, 1995, 240 SCRA 283.

[41] G.R. No. 128900, July 14, 2000, 335 SCRA 646.

[42] G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 565.

had resolved to commit the crime prior to the moment of the killing, or that the death of the victim was the result of premeditation, calculation or reflection.

b. Abuse of superior strength

We agree, however, that abuse of superior strength attended the killing of the victim. To take advantage of superior strength means to use purposely excessive force, or force out of proportion to the means of defense available to the person attacked. The aggravating circumstance of abuse of superior strength depends on the age, size and strength of the parties.[43] It is present whenever there is inequality of forces between the victim and the aggressor so that the superiority of strength is notoriously advantageous for the latter who took advantage of this superiority in committing the crime.[44]

The records reveal that the **lone** and **unarmed** victim was held by the appellant by hand and led to the other side of the road; struck on the head by Porpirio; boxed by the appellant; and then successively stabbed by John Doe and by the appellant. Clearly, the victim was in no position to defend himself; he was overwhelmed by the combined efforts of all three (3) assailants who did not only **enjoy superiority in number**, **but also of weapons**. This numerical and physical disparity was manifest in the victim's various abrasions on the shoulders and knees; incised wounds on the forehead, chest, hand and back; and stab wounds on the neck and chest. That the assailants took advantage of their superior number and combined strength as against the relatively defenseless victim can be clearly discerned from these circumstances.

c. Evident premeditation

While evident premeditation was alleged in the Information, the court *a quo* correctly concluded that this circumstance was

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[43] *People v. Barcelon, Jr.*, G.R. No. 144308, September 24, 2002, 389 SCRA 556.

[44] *People v. Riglos*, G.R. No. 134763, September 4, 2000, 339 SCRA 562, citing *People v. Asis*, 286 SCRA 64, 74 (1998).

not proven. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect on the consequences of his act.[45] Significantly, the prosecution did not even attempt to prove the presence of these elements; Alfonso, the principal eyewitness, was not even aware of any prior incident or any possible reason that could have led the appellant and his co-accused to attack the victim.

Conspiracy

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. It may be deduced from the mode and manner by which the offense was perpetrated or inferred from the acts of the accused showing a joint or common purpose and design, concerted action and community of interest.[46]

In the present case, no evidence exists showing that the three (3) assailants previously met and came to an agreement to attack the victim. However, from the evidence presented, it was clear that they aimed their acts towards the accomplishment of the same unlawful object. Each did an act that, though apparently independent, was in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment.

To the point of being repetitive, we restate what Alfonso, the principal witness, positively narrated in court: the appellant

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[45] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554.

[46] *People v. Francisco*, G.R. Nos. 118573-74, May 31, 2000, 332 SCRA 305.

held the hand of the victim and led him towards the other side of the road; Porpirio hit the victim on the head with a piece of wood causing the latter to fall to his knees; the appellant boxed the victim until John Doe came and stabbed him at the back; then the appellant, who was at the victim's front, stabbed him in the chest.

In our view, these joint actions sufficiently point to a common design to end the life of the victim. Thus, the act of one acting pursuant to this design is deemed the act of all.[47]

The proper penalty

The crime of murder qualified by abuse of superior strength is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with *reclusion perpetua* to death.

While treachery and evident premeditation were alleged in the Information, these circumstances were not adequately proven. In the absence of mitigating and aggravating circumstances in the commission of the felony, the courts *a quo* correctly sentenced the appellant to *reclusion perpetua*, conformably with Article 63(2)[48] of the Revised Penal Code.

Civil Liability

The RTC awarded the amount of ₱56,112.00 to the victim's heirs as actual damages. It appears that out of the said amount, only ₱55,438.00 was duly supported by receipts. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon

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[47] *People v. Delmo*, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395, 434.

[48] 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 shall be observed in the application thereof:

x x x x x x x x x

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

competent proof and on the best evidence obtainable to the injured party.[49]

We also award indemnity for loss of earning capacity to the victim's heirs, as documentary evidence (Exh. "D")[50] was presented to substantiate this claim. Indemnity for loss of earning capacity is determinable under established jurisprudence based on the *net earning capacity* of the murder victim computed under the formula:

> Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses)[51]

The records show that the victim's annual gross income was ₱61,245.60 computed from his weekly rate of ₱1,275.95 (or ₱5,103.80 per month). His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱30,622.80. His life expectancy, on the other hand, is assumed to be 2/3 of age 80 less 31, his age at the time of death. Applied to the above formula, these data yield the net earning capacity loss of ₱1,010,552.40.

We affirm the awards of ₱50,000.00 as civil indemnity[52] and ₱50,000 as moral damages[53] pursuant to current jurisprudence.

The heirs of the victim are likewise entitled to exemplary damages since the qualifying circumstance of abuse of superior strength was firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00[54] as exemplary damages is justified under Article 2230 of the New Civil Code.

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[49] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003. 403 SCRA 153.

[50] Pay Envelope and Advice Slip.

[51] *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 294.

[52] *People v. Villa, Jr.*, G.R. No. 179278, March 28, 2008.

[53] *People v. Eling*, G.R. No. 178546, April 30, 2008.

[54] See *People v. Tolentino*, G.R. No. 176385, February 26, 2008.

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the April 27, 2006 Decision of the CA in CA-G.R. CR-HC No. 00727 with the following *MODIFICATIONS*:

(1) actual damages is REDUCED to ₱55,438.00; and

(2) the appellant is ORDERED to pay the heirs of the victim ₱1,010,552.40 as indemnity for loss of earning capacity.

Costs against appellant Dante Nueva.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 155635. November 7, 2008]

MARIA REBECCA MAKAPUGAY BAYOT, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and VICENTE MADRIGAL BAYOT,** *respondents.*

[G.R. No. 163979. November 7, 2008]

MARIA REBECCA MAKAPUGAY BAYOT, *petitioner, vs.* **VICENTE MADRIGAL BAYOT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PHYSICAL EVIDENCE; DOCUMENTARY EVIDENCE; CERTIFICATE IN QUESTION MUST BE SPURIOUS; CASE AT BAR. — From the text of ID Certificate No. RC 9778, the following material facts and dates may be deduced: (1) Bureau Associate Commissioner Jose B. Lopez issued the Order of Recognition

on **October 6, 1995**; (2) the 1st Indorsement of Secretary of Justice Artemio G. Tuquero affirming Rebecca's recognition as a Filipino citizen was issued on **June 8, 2000** or almost five years from the date of the order of recognition; and (3) ID Certificate No. RC 9778 was purportedly issued on **October 11, 1995** after the payment of the PhP2,000 fee on October 10, 1995 per OR No. 5939988. What begs the question is, however, how the above certificate could have been issued by the Bureau on October 11, 1995 when the Secretary of Justice issued the required affirmation only on June 8, 2000. No explanation was given for this patent aberration. There seems to be no error with the date of the issuance of the 1st Indorsement by Secretary of Justice Tuquero as this Court takes judicial notice that he was the Secretary of Justice from February 16, 2000 to January 22, 2001. There is, thus, a strong valid reason to conclude that the certificate in question must be spurious.

2. POLITICAL LAW; CITIZENSHIP; BUREAU OF IMMIGRATION; INSTRUCTION NO. RBR-99-002 ON RECOGNITION AS A FILIPINO CITIZEN; CASE AT BAR. — Pertinently, Bureau Law Instruction No. RBR-99-002 on Recognition as a Filipino Citizen clearly provides: The Bureau [of Immigration] through its Records Section shall automatically furnish the Department of Justice an official copy of its Order of Recognition within 72 days from its date of approval by the way of indorsement for confirmation of the Order by the Secretary of Justice pursuant to Executive Order No. 292. **No Identification Certificate shall be issued before the date of confirmation by the Secretary of Justice** and any Identification Certificate issued by the Bureau pursuant to an Order of Recognition shall prominently indicate thereon the date of confirmation by the Secretary of Justice. Not lost on the Court is the acquisition by Rebecca of her Philippine passport only on June 13, 2000, or five days after then Secretary of Justice Tuquero issued the 1st Indorsement confirming the order of recognition. It may be too much to attribute to coincidence this unusual sequence of close events which, to us, clearly suggests that prior to said affirmation or confirmation, Rebecca was not yet recognized as a Filipino citizen. The same sequence would also imply that ID Certificate No. RC 9778 could not have been issued in 1995, as Bureau Law Instruction No. RBR-99-002 mandates that no identification certificate shall be issued before the date of confirmation by

the Secretary of Justice. Logically, therefore, the affirmation or confirmation of Rebecca's recognition as a Filipino citizen through the 1st Indorsement issued only on June 8, 2000 by Secretary of Justice Tuquero corresponds to the eventual issuance of Rebecca's passport a few days later, or on June 13, 2000 to be exact.

3. CIVIL LAW; FAMILY CODE; FOREIGN DIVORCE; RECOGNIZED IN PHILIPPINES PROVIDED DIVORCE DECREE IS PROVEN AS A FACT AND AS VALID UNDER THE NATIONAL LAW OF THE ALIEN SPOUSE; CASE AT BAR. — To be sure, the Court has taken stock of the holding in *Garcia v. Recio* that a foreign divorce can be recognized here, provided the divorce decree is proven as a fact and as valid under the national law of the alien spouse. Be this as it may, the fact that Rebecca was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union, the presentation of a copy of foreign divorce decree **duly authenticated** by the foreign court issuing said decree is, as here, sufficient. *First*, at the time of the divorce, as above elucidated, Rebecca was still to be recognized, assuming for argument that she was in fact later recognized, as a Filipino citizen, but represented herself in public documents as an American citizen. At the very least, she chose, before, during, and shortly after her divorce, her American citizenship to govern her marital relationship. *Second,* she secured personally said divorce as an American citizen, as is evident in the text of the Civil Decrees. *Third,* being an American citizen, Rebecca was bound by the national laws of the United States of America, a country which allows divorce. *Fourth,* the property relations of Vicente and Rebecca were properly adjudicated through their Agreement executed on December 14, 1996 after Civil Decree No. 362/96 was rendered on February 22, 1996, and duly affirmed by Civil Decree No. 406/97 issued on March 4, 1997. Veritably, the foreign divorce secured by Rebecca was valid.

4. ID.; ID.; ID.; ID.; CAPACITY OF FILIPINO SPOUSE TO REMARRY UNDER PHILIPPINE LAW; CASE AT BAR. — The divorce decree in question also brings into play the second paragraph of Art. 26 of the Family Code, providing as follows: Art. 26. x x x Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is

thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. (*As amended by E.O.* 227) In *Republic v. Orbecido III*, we spelled out the twin elements for the applicability of the second paragraph of Art. 26, thus: x x x [W]e state the twin elements for the application of Paragraph 2 of Article 26 as follows: 1.There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and 2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry. The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry. Both elements obtain in the instant case. We need not belabor further the fact of marriage of Vicente and Rebecca, their citizenship when they wed, and their professed citizenship during the valid divorce proceedings.

5. CIVIL LAW; ESTOPPEL; APPLICABLE IN CASE AT BAR. — Not to be overlooked of course is the fact that Civil Decree No. 406/97 and the Agreement executed on December 14, 1996 bind both Rebecca and Vicente as regards their property relations. The Agreement provided that the ex-couple's conjugal property consisted only their family home. This property settlement embodied in the Agreement was affirmed by the divorce court which, per its second divorce decree, Civil Decree No. 406/97 dated March 4, 1997, ordered that, "THIRD: That the agreement entered into between the parties dated 14th day of December 1996 in Makati City, Philippines shall survive in this Judgment of divorce by reference but not merged and that the parties are hereby ordered and directed to **comply with each and every provision of said agreement**." Rebecca has not repudiated the property settlement contained in the Agreement. She is thus estopped by her representation before the divorce court from asserting that her and Vicente's conjugal property was not limited to their family home in Ayala Alabang.

6. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; CONSTRUED. — Upon the foregoing disquisitions, it is abundantly clear to the Court that Rebecca lacks, under the premises, cause of action. *Philippine Bank of Communications v. Trazo* explains the concept and elements of a cause of action, thus: A cause of action is an act or omission

of one party in violation of the legal right of the other. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following **elements** are present, 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 the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages. One thing is clear from a perusal of Rebecca's underlying petition before the RTC, Vicente's motion to dismiss and Rebecca's opposition thereof, with the documentary evidence attached therein: The petitioner lacks a cause of action for declaration of nullity of marriage, a suit which presupposes the existence of a marriage.

7. CIVIL LAW; FAMILY CODE; SUPPORT FOR CHILDREN; ISSUE OF BACK SUPPORT, DUE TO FACT THAT THE CHILDREN COULD HAVE REACHED THE AGE OF MAJORITY IS BEST LITIGATED IN A CIVIL ACTION FOR REIMBURSEMENT. — The Court to be sure does not lose sight of the legal obligation of Vicente and Rebecca to support the needs of their daughter, Alix. The records do not clearly show how he had discharged his duty, albeit Rebecca alleged that the support given had been insufficient. At any rate, we do note that Alix, having been born on November 27, 1982, reached the majority age on November 27, 2000, or four months before her mother initiated her petition for declaration of nullity. She would now be 26 years old. Hence, the issue of back support, which allegedly had been partly shouldered by Rebecca, is best litigated in a separate civil action for reimbursement. In this way, the actual figure for the support of Alix can be proved as well as the earning capacity of both Vicente and Rebecca. The trial court can thus determine what Vicente owes, if any, considering that support includes provisions until the child concerned shall have finished her education.

APPEARANCES OF COUNSEL

Zulueta Puno & Associates for petitioner.
Meer Meer & Meer and *Villaraza & Angcangco* for V.M. Bayot.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us are these two petitions interposed by petitioner Maria Rebecca Makapugay Bayot impugning certain issuances handed out by the Court of Appeals (CA) in CA-G.R. SP No. 68187.

In the first, a petition for *certiorari*[1] under Rule 65 and docketed as **G.R. No. 155635**, Rebecca assails and seeks to nullify the April 30, 2002 Resolution[2] of the CA, as reiterated in another Resolution of September 2, 2002,[3] granting a writ of preliminary injunction in favor of private respondent Vicente Madrigal Bayot staving off the trial court's grant of support *pendente lite* to Rebecca.

The second, a petition for review under Rule 45,[4] docketed **G.R. No. 163979**, assails the March 25, 2004 Decision[5] of the CA, (1) dismissing Civil Case No. 01-094, a suit for declaration of absolute nullity of marriage with application for support commenced by Rebecca against Vicente before the Regional Trial Court (RTC) in Muntinlupa City; and (2) setting aside certain orders and a resolution issued by the RTC in the said case.

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[1] *Rollo* (G.R. No. 155635), pp. 3-34.

[2] *Id.* at 36-38. Penned by Associate, now Presiding, Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Mario L. Guariña III.

[3] *Id.* at 40-41.

[4] *Rollo* (G.R. No. 163979), pp. 10-43.

[5] *Id.* at 575-583.

Per its Resolution of August 11, 2004, the Court ordered the consolidation of both cases.

The Facts

Vicente and Rebecca were married on April 20, 1979 in Sanctuario de San Jose, Greenhills, Mandaluyong City. On its face, the Marriage Certificate[6] identified Rebecca, then 26 years old, to be an American citizen[7] born in Agaña, Guam, USA to Cesar Tanchiong Makapugay, American, and Helen Corn Makapugay, American.

On November 27, 1982 in San Francisco, California, Rebecca gave birth to Marie Josephine Alexandra or Alix. From then on, Vicente and Rebecca's marital relationship seemed to have soured as the latter, sometime in 1996, initiated divorce proceedings in the Dominican Republic. Before the Court of the First Instance of the Judicial District of Santo Domingo, Rebecca personally appeared, while Vicente was duly represented by counsel. On February 22, 1996, the Dominican court issued **Civil Decree No. 362/96**,[8] ordering the dissolution of the couple's marriage and "leaving them to remarry after completing the legal requirements," but giving them joint custody and guardianship over Alix. Over a year later, the same court would issue **Civil Decree No. 406/97**,[9] settling the couple's property relations pursuant to an Agreement[10] they executed on December 14, 1996. Said agreement specifically stated that the "conjugal property which they acquired during their marriage consist[s] only of the real property and all the improvements and personal properties therein contained at 502 Acacia Avenue, Alabang, Muntinlupa."[11]

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[6] *Id.* at 145.

[7] See Certification of Birth from the Government of Guam issued on June 1, 2000; *rollo* (G.R. No. 155635), p. 213.

[8] *Rollo* (G.R. No. 163979), pp. 146-150.

[9] *Id.* at 214-217.

[10] *Rollo* (G.R. No. 155635), pp. 151-158.

[11] *Id.* at 154.

Meanwhile, on March 14, 1996, or less than a month from the issuance of Civil Decree No. 362/96, Rebecca filed with the Makati City RTC a petition[12] dated January 26, 1996, with attachments, for declaration of nullity of marriage, docketed as Civil Case No. 96-378. Rebecca, however, later moved[13] and secured approval[14] of the motion to withdraw the petition.

On May 29, 1996, Rebecca executed an Affidavit of Acknowledgment[15] stating under oath that she is an American citizen; that, since 1993, she and Vicente have been living separately; and that she is carrying a child not of Vicente.

On March 21, 2001, Rebecca filed another petition, this time before the Muntinlupa City RTC, for declaration of absolute nullity of marriage[16] on the ground of Vicente's alleged psychological incapacity. Docketed as Civil Case No. 01-094 and entitled as *Maria Rebecca Makapugay Bayot v. Vicente Madrigal Bayot*, the petition was eventually raffled to Branch 256 of the court. In it, Rebecca also sought the dissolution of the conjugal partnership of gains with application for support *pendente lite* for her and Alix. Rebecca also prayed that Vicente be ordered to pay a permanent monthly support for their daughter Alix in the amount of PhP 220,000.

On June 8, 2001, Vicente filed a Motion to Dismiss[17] on, *inter alia*, the grounds of lack of cause of action and that the petition is barred by the prior judgment of divorce. Earlier, on June 5, 2001, Rebecca filed and moved for the allowance of her application for support *pendente lite*.

To the motion to dismiss, Rebecca interposed an opposition, insisting on her Filipino citizenship, as affirmed by the Department

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[12] *Rollo* (G.R. No. 163979), pp. 206-212.

[13] *Id.* at 305-306. Per a motion to withdraw dated November 8, 1996.

[14] *Id.* at 213. Per Order of Judge Josefina Guevara Salonga dated November 14, 1996.

[15] *Id.* at 236-237.

[16] *Id.* at 126-144.

[17] *Id.* at 156-204.

of Justice (DOJ), and that, therefore, there is no valid divorce to speak of.

Meanwhile, Vicente, who had in the interim contracted another marriage, and Rebecca commenced several criminal complaints against each other. Specifically, Vicente filed adultery and perjury complaints against Rebecca. Rebecca, on the other hand, charged Vicente with bigamy and concubinage.

Ruling of the RTC on the Motion to Dismiss and Motion for Support *Pendente Lite*

On August 8, 2001, the RTC issued an Order[18] denying Vicente's motion to dismiss Civil Case No. 01-094 and granting Rebecca's application for support *pendente lite,* disposing as follows:

> Wherefore, premises considered, the Motion to Dismiss filed by the respondent is DENIED. Petitioner's Application in Support of the Motion for Support *Pendente Lite* is hereby GRANTED. Respondent is hereby ordered to remit the amount of TWO HUNDRED AND TWENTY THOUSAND PESOS (Php 220,000.00) a month to Petitioner as support for the duration of the proceedings relative to the instant Petition.
>
> SO ORDERED.[19]

The RTC declared, among other things, that the divorce judgment invoked by Vicente as bar to the petition for declaration of absolute nullity of marriage is a matter of defense best taken up during actual trial. As to the grant of support *pendente lite*, the trial court held that a mere allegation of adultery against Rebecca does not operate to preclude her from receiving legal support.

Following the denial[20] of his motion for reconsideration of the above August 8, 2001 RTC order, Vicente went to the CA on a petition for *certiorari,* with a prayer for the issuance of

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[18] *Id.* at 123-124. Penned by Presiding Judge Alberto L. Lerma.

[19] *Id.* at 338.

[20] *Id.* at 125. Per Order dated November 20, 2001.

a temporary restraining order (TRO) and/or writ of preliminary injunction.[21] His petition was docketed as CA-G.R. SP No. 68187.

Grant of Writ of Preliminary Injunction by the CA

On January 9, 2002, the CA issued the desired TRO.[22] On April 30, 2002, the appellate court granted, via a Resolution, the issuance of a writ of preliminary injunction, the decretal portion of which reads:

> IN VIEW OF ALL THE FOREGOING, pending final resolution of the petition at bar, let the Writ of Preliminary Injunction be ISSUED in this case, enjoining the respondent court from implementing the assailed Omnibus Order dated August 8, 2001 and the Order dated November 20, 2001, and from conducting further proceedings in Civil Case No. 01-094, upon the posting of an injunction bond in the amount of P250,000.00.
>
> SO ORDERED.[23]

Rebecca moved[24] but was denied reconsideration of the aforementioned April 30, 2002 resolution. In the meantime, on May 20, 2002, the preliminary injunctive writ[25] was issued. Rebecca also moved for reconsideration of this issuance, but the CA, by Resolution dated September 2, 2002, denied her motion.

The adverted CA resolutions of April 30, 2002 and September 2, 2002 are presently being assailed in Rebecca's petition for *certiorari*, docketed under **G.R. No. 155635**.

Ruling of the CA

Pending resolution of **G.R. No. 155635**, the CA, by a Decision dated March 25, 2004, effectively dismissed Civil Case No. 01-094, and set aside incidental orders the RTC issued in relation

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[21] *Rollo* (G.R. No. 155635), pp. 512-590.

[22] *Id.* at 592-593.

[23] *Id.* at 38.

[24] *Id.* at 852-869.

[25] *Id.* at 850-851.

to the case. The *fallo* of the presently assailed CA Decision reads:

> IN VIEW OF THE FOREGOING, the petition is GRANTED. The Omnibus Order dated August 8, 2001 and the Order dated November 20, 2001 are REVERSED and SET ASIDE and a new one entered DISMISSING Civil Case No. 01-094, for failure to state a cause of action. No pronouncement as to costs.
>
> SO ORDERED.[26]

To the CA, the RTC ought to have granted Vicente's motion to dismiss on the basis of the following premises:

(1) As held in *China Road and Bridge Corporation v. Court of Appeals*, the hypothetical-admission rule applies in determining whether a complaint or petition states a cause of action.[27] Applying said rule in the light of the essential elements of a cause of action,[28] Rebecca had no cause of action against Vicente for declaration of nullity of marriage.

(2) Rebecca no longer had a legal right in this jurisdiction to have her marriage with Vicente declared void, the union having previously been dissolved on February 22, 1996 by the foreign divorce decree she personally secured as an American citizen. Pursuant to the second paragraph of Article 26 of the Family Code, such divorce restored Vicente's capacity to contract another marriage.

(3) Rebecca's contention about the nullity of a divorce, she being a Filipino citizen at the time the foreign divorce decree was rendered, was dubious. Her allegation as to her alleged Filipino citizenship was also doubtful as it was not shown that her father, at the time of her birth, was still a Filipino citizen.

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[26] *Supra* note 5, at 583.

[27] G.R. No. 137898, December 15, 2000, 348 SCRA 401, 409.

[28] Enumerated in *San Lorenzo Village Association, Inc. v. Court of Appeals*, G.R. No. 116825 March 26, 1998, 288 SCRA 115, 125: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.

The Certification of Birth of Rebecca issued by the Government of Guam also did not indicate the nationality of her father.

(4) Rebecca was estopped from denying her American citizenship, having professed to have that nationality status and having made representations to that effect during momentous events of her life, such as: (a) during her marriage; (b) when she applied for divorce; and (c) when she applied for and eventually secured an American passport on January 18, 1995, or a little over a year before she initiated the first but later withdrawn petition for nullity of her marriage (Civil Case No. 96-378) on March 14, 1996.

(5) Assuming that she had dual citizenship, being born of a purportedly Filipino father in Guam, USA which follows the *jus soli* principle, Rebecca's representation and assertion about being an American citizen when she secured her foreign divorce precluded her from denying her citizenship and impugning the validity of the divorce.

Rebecca seasonably filed a motion for reconsideration of the above Decision, but this recourse was denied in the equally assailed June 4, 2004 Resolution.[29] Hence, Rebecca's Petition for Review on *Certiorari* under Rule 45, docketed under **G.R. No. 163979**.

The Issues

In **G.R. No. 155635**, Rebecca raises four (4) assignments of errors as grounds for the allowance of her petition, all of which converged on the proposition that the CA erred in enjoining the implementation of the RTC's orders which would have entitled her to support pending final resolution of Civil Case No. 01-094.

In **G.R. No. 163979**, Rebecca urges the reversal of the assailed CA decision submitting as follows:

I

THE COURT OF APPEALS GRAVELY ERRED IN NOT MENTIONING AND NOT TAKING INTO CONSIDERATION IN ITS

[29] *Rollo* (G.R. No. 163979), p. 597.

APPRECIATION OF THE FACTS THE FACT OF PETITIONER'S FILIPINO CITIZENSHIP AS CATEGORICALLY STATED AND ALLEGED IN HER PETITION BEFORE THE COURT *A QUO*.

II

THE COURT OF APPEALS GRAVELY ERRED IN RELYING ONLY ON ANNEXES TO THE PETITION IN RESOLVING THE MATTERS BROUGHT BEFORE IT.

III

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER THAT RESPONDENT IS ESTOPPED FROM CLAIMING THAT HIS MARRIAGE TO PETITIONER HAD ALREADY BEEN DISSOLVED BY VIRTUE OF HIS SUBSEQUENT AND CONCURRENT ACTS.

IV

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE WAS ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT, MUCH LESS A GRAVE ABUSE.[30]

We shall first address the petition in G.R. No. 163979, its outcome being determinative of the success or failure of the petition in G.R. No. 155635.

Three legal premises need to be underscored at the outset. *First*, a divorce obtained abroad by an alien married to a Philippine national may be recognized in the Philippines, provided the decree of divorce is valid according to the national law of the foreigner.[31] *Second*, the reckoning point is not the citizenship of the divorcing parties at birth or at the time of marriage, but their citizenship at the time a valid divorce is obtained abroad. And *third*, an absolute divorce secured by a Filipino married to another Filipino is contrary to our concept of public policy and morality and shall not be recognized in this jurisdiction.[32]

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

[31] *Garcia v. Recio*, G.R. No. 138322, October 2, 2001, 366 SCRA 437, 447.

[32] *Llorente v. Court of Appeals*, G.R. No. 124371, November 23, 2000, 345 SCRA 592, 600.

Given the foregoing perspective, the determinative issue tendered in G.R. No. 155635, *i.e.*, the propriety of the granting of the motion to dismiss by the appellate court, resolves itself into the questions of: *first*, whether petitioner Rebecca was a Filipino citizen at the time the divorce judgment was rendered in the Dominican Republic on February 22, 1996; and *second*, whether the judgment of divorce is valid and, if so, what are its consequent legal effects?

The Court's Ruling

The petition is bereft of merit.

Rebecca an American Citizen in the Purview of This Case

There can be no serious dispute that Rebecca, at the time she applied for and obtained her divorce from Vicente, was an American citizen and remains to be one, absent proof of an effective repudiation of such citizenship. The following are compelling circumstances indicative of her American citizenship: (1) she was born in Agaña, Guam, USA; (2) the principle of *jus soli* is followed in this American territory granting American citizenship to those who are born there; and (3) she was, and may still be, a holder of an American passport.[33]

And as aptly found by the CA, Rebecca had consistently professed, asserted, and represented herself as an American citizen, particularly: (1) during her marriage as shown in the marriage certificate; (2) in the birth certificate of Alix; and (3) when she secured the divorce from the Dominican Republic. Mention may be made of the Affidavit of Acknowledgment[34] in which she stated being an American citizen.

It is true that Rebecca had been issued by the Bureau of Immigration (Bureau) of Identification (ID) Certificate No. RC 9778 and a Philippine Passport. On its face, ID Certificate No. RC 9778 would tend to show that she has indeed been recognized as a Filipino citizen. It cannot be over-emphasized,

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[33] *Rollo* (G.R. No. 155635), pp. 388-389, issued on January 18, 1995 with expiration date on January 17, 2005.

[34] *Supra* note 15.

however, that such recognition was given only on June 8, 2000 upon the affirmation by the Secretary of Justice of Rebecca's recognition pursuant to the Order of Recognition issued by Bureau Associate Commissioner Edgar L. Mendoza.

For clarity, we reproduce in full the contents of ID Certificate No. RC 9778:

To Whom It May Concern:

This is to certify that *MARIA REBECCA MAKAPUGAY BAYOT* whose photograph and thumbprints are affixed hereto and partially covered by the seal of this Office, and whose other particulars are as follows:

Place of Birth: Guam, USA Date of Birth: March 5, 1953 Sex: female Civil Status: married Color of Hair: brown Color of Eyes: brown Distinguishing Marks on face: none was — recognized — as a citizen of the Philippines as per pursuant to Article IV, Section 1, Paragraph 3 of the 1935 Constitution per order of Recognition JBL 95-213 signed by Associate Commissioner Jose B. Lopez dated October 6, 1995, and duly affirmed by Secretary of Justice Artemio G. Tuquero in his 1st Indorsement dated June 8, 2000.

Issued for identification purposes only. NOT VALID for travel purposes.

Given under my hand and seal this 11th day of October, 1995

(SGD) EDGAR L. MENDOZA
ASSO. COMMISSIONER

Official Receipt No. 5939988
issued at Manila
dated Oct. 10, 1995 for ₱ 2,000

From the text of ID Certificate No. RC 9778, the following material facts and dates may be deduced: (1) Bureau Associate Commissioner Jose B. Lopez issued the Order of Recognition on **October 6, 1995**; (2) the 1st Indorsement of Secretary of Justice Artemio G. Tuquero affirming Rebecca's recognition as a Filipino citizen was issued on **June 8, 2000** or almost five years from the date of the order of recognition; and (3) ID Certificate No. RC 9778 was purportedly issued on **October**

11, 1995 after the payment of the PhP 2,000 fee on October 10, 1995 per OR No. 5939988.

What begs the question is, however, how the above certificate could have been issued by the Bureau on October 11, 1995 when the Secretary of Justice issued the required affirmation only on June 8, 2000. No explanation was given for this patent aberration. There seems to be no error with the date of the issuance of the 1st Indorsement by Secretary of Justice Tuquero as this Court takes judicial notice that he was the Secretary of Justice from February 16, 2000 to January 22, 2001. There is, thus, a strong valid reason to conclude that the certificate in question must be spurious.

Under extant immigration rules, applications for recognition of Filipino citizenship require the affirmation by the DOJ of the Order of Recognition issued by the Bureau. Under Executive Order No. 292, also known as the *1987 Administrative Code*, specifically in its Title III, Chapter 1, Sec. 3(6), it is the DOJ which is tasked to "provide immigration and naturalization regulatory services and **implement the laws governing citizenship** and the admission and stay of aliens." Thus, the confirmation by the DOJ of any Order of Recognition for Filipino citizenship issued by the Bureau is required.

Pertinently, Bureau Law Instruction No. RBR-99-002[35] on Recognition as a Filipino Citizen clearly provides:

> The Bureau [of Immigration] through its Records Section shall automatically furnish the Department of Justice an official copy of its Order of Recognition within 72 days from its date of approval by the way of indorsement for confirmation of the Order by the Secretary of Justice pursuant to Executive Order No. 292. **No Identification Certificate shall be issued before the date of confirmation by the Secretary of Justice** and any Identification Certificate issued by the Bureau pursuant to an Order of Recognition shall prominently indicate thereon the date of confirmation by the Secretary of Justice. (Emphasis ours.)

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[35] Adopted on April 15, 1999.

Not lost on the Court is the acquisition by Rebecca of her Philippine passport only on June 13, 2000, or five days after then Secretary of Justice Tuquero issued the 1st Indorsement confirming the order of recognition. It may be too much to attribute to coincidence this unusual sequence of close events which, to us, clearly suggests that prior to said affirmation or confirmation, Rebecca was not yet recognized as a Filipino citizen. The same sequence would also imply that ID Certificate No. RC 9778 could not have been issued in 1995, as Bureau Law Instruction No. RBR-99-002 mandates that no identification certificate shall be issued before the date of confirmation by the Secretary of Justice. Logically, therefore, the affirmation or confirmation of Rebecca's recognition as a Filipino citizen through the 1st Indorsement issued only on June 8, 2000 by Secretary of Justice Tuquero corresponds to the eventual issuance of Rebecca's passport a few days later, or on June 13, 2000 to be exact.

When Divorce Was Granted Rebecca, She Was not a Filipino Citizen and Was not Yet Recognized as One

The Court can assume hypothetically that Rebecca is now a Filipino citizen. But from the foregoing disquisition, it is indubitable that Rebecca did not have that status of, or at least was not yet recognized as, a Filipino citizen when she secured the February 22, 1996 judgment of divorce from the Dominican Republic.

The Court notes and at this juncture wishes to point out that Rebecca voluntarily withdrew her original petition for declaration of nullity (Civil Case No. 96-378 of the Makati City RTC) obviously because she could not show proof of her alleged Filipino citizenship then. In fact, a perusal of that petition shows that, while bearing the date January 26, 1996, it was only filed with the RTC on March 14, 1996 or less than a month after Rebecca secured, on February 22, 1996, the foreign divorce decree in question. Consequently, there was no mention about said divorce in the petition. Significantly, the only documents appended as annexes to said original petition were: the Vicente-Rebecca Marriage Contract (Annex "A") and Birth Certificate of Alix (Annex "B"). If indeed ID Certificate No. RC 9778 from the

Bureau was truly issued on October 11, 1995, is it not but logical to expect that this piece of document be appended to form part of the petition, the question of her citizenship being crucial to her case?

As may be noted, the petition for declaration of absolute nullity of marriage under Civil Case No. 01-094, like the withdrawn first petition, also did not have the ID Certificate from the Bureau as attachment. What were attached consisted of the following material documents: Marriage Contract (Annex "A") and Divorce Decree. It was only through her Opposition (To Respondent's Motion to Dismiss dated 31 May 2001)[36] did Rebecca attach as Annex "C" ID Certificate No. RC 9778.

At any rate, the CA was correct in holding that the RTC had sufficient basis to dismiss the petition for declaration of absolute nullity of marriage as said petition, taken together with Vicente's motion to dismiss and Rebecca's opposition to motion, with their respective attachments, clearly made out a case of lack of cause of action, which we will expound later.

Validity of Divorce Decree

Going to the second core issue, we find Civil Decree Nos. 362/96 and 406/97 valid.

First, at the time of the divorce, as above elucidated, Rebecca was still to be recognized, assuming for argument that she was in fact later recognized, as a Filipino citizen, but represented herself in public documents as an American citizen. At the very least, she chose, before, during, and shortly after her divorce, her American citizenship to govern her marital relationship. *Second*, she secured personally said divorce as an American citizen, as is evident in the text of the Civil Decrees, which pertinently declared:

IN THIS ACTION FOR DIVORCE in which the parties expressly submit to the jurisdiction of this court, by reason of the existing incompatibility of temperaments x x x. The parties MARIA REBECCA M. BAYOT, **of United States nationality**, 42 years of age, married,

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[36] *Rollo* (G.R. No. 163979), pp. 268-292.

domiciled and residing at 502 Acacia Ave., Ayala Alabang, Muntin Lupa, Philippines, x x x, who **personally appeared before this court**, accompanied by DR. JUAN ESTEBAN OLIVERO, attorney, x x x and VICENTE MADRIGAL BAYOT, of Philippine nationality, of 43 years of age, married and domiciled and residing at 502 Acacia Ave., Ayala Alabang, Muntin Lupa, Filipino, appeared before this court represented by DR. ALEJANDRO TORRENS, attorney, x x x, revalidated by special power of attorney given the 19th of February of 1996, signed before the Notary Public Enrico L. Espanol of the City of Manila, duly legalized and authorizing him to subscribe all the acts concerning this case.[37] (Emphasis ours.)

Third, being an American citizen, Rebecca was bound by the national laws of the United States of America, a country which allows divorce. *Fourth*, the property relations of Vicente and Rebecca were properly adjudicated through their Agreement[38] executed on December 14, 1996 after Civil Decree No. 362/96 was rendered on February 22, 1996, and duly affirmed by Civil Decree No. 406/97 issued on March 4, 1997. Veritably, the foreign divorce secured by Rebecca was valid.

To be sure, the Court has taken stock of the holding in *Garcia v. Recio* that a foreign divorce can be recognized here, provided the divorce decree is proven as a fact and as valid under the national law of the alien spouse.[39] Be this as it may, the fact that Rebecca was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union,[40] the presentation of a copy of foreign divorce decree **duly authenticated** by the foreign court issuing said decree is, as here, sufficient.

It bears to stress that the existence of the divorce decree has not been denied, but in fact admitted by both parties. And neither did they impeach the jurisdiction of the divorce court nor challenge

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[37] *Id.* at 147, 214-215.

[38] *Supra* note 10.

[39] *Supra* note 31.

[40] *Van Dorn v. Romillo, Jr.*, No. 68470, October 8, 1985, 139 SCRA 139, 143.

the validity of its proceedings on the ground of collusion, fraud, or clear mistake of fact or law, albeit both appeared to have the opportunity to do so. The same holds true with respect to the decree of partition of their conjugal property. As this Court explained in *Roehr v. Rodriguez*:

> Before our courts can give the effect of *res judicata* to a foreign judgment [of divorce] x x x, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court (now Rule 39, Section 48, 1997 Rules of Civil Procedure), to wit:
>
> > SEC. 50. *Effect of foreign judgments*.—The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:
> >
> > (a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;
> >
> > (b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.
>
> It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy. In this jurisdiction, our Rules of Court clearly provide that with respect to actions *in personam*, as distinguished from actions *in rem*, a foreign judgment merely constitutes *prima facie* evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary.[41]

As the records show, Rebecca, assisted by counsel, personally secured the foreign divorce while Vicente was duly represented by his counsel, a certain Dr. Alejandro Torrens, in said proceedings. As things stand, the foreign divorce decrees rendered and issued by the Dominican Republic court are valid and, consequently, bind both Rebecca and Vicente.

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[41] G.R. No. 142820, June 20, 2003, 404 SCRA 495, 502-503.

Finally, the fact that Rebecca may have been duly recognized as a Filipino citizen by force of the June 8, 2000 affirmation by Secretary of Justice Tuquero of the October 6, 1995 Bureau Order of Recognition will not, standing alone, work to nullify or invalidate the foreign divorce secured by Rebecca as an American citizen on February 22, 1996. For as we stressed at the outset, in determining whether or not a divorce secured abroad would come within the pale of the country's policy against absolute divorce, the reckoning point is the citizenship of the parties at the time a valid divorce is obtained.[42]

Legal Effects of the Valid Divorce

Given the validity and efficacy of divorce secured by Rebecca, the same shall be given a *res judicata* effect in this jurisdiction. As an obvious result of the divorce decree obtained, the marital *vinculum* between Rebecca and Vicente is considered severed; they are both freed from the bond of matrimony. In plain language, Vicente and Rebecca are no longer husband and wife to each other. As the divorce court formally pronounced: "[T]hat the marriage between MARIA REBECCA M. BAYOT and VICENTE MADRIGAL BAYOT is hereby **dissolved x x x leaving them free to remarry after completing the legal requirements**."[43]

Consequent to the dissolution of the marriage, Vicente could no longer be subject to a husband's obligation under the Civil Code. He cannot, for instance, be obliged to live with, observe respect and fidelity, and render support to Rebecca.[44]

The divorce decree in question also brings into play the second paragraph of Art. 26 of the Family Code, providing as follows:

Art. 26. x x x

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino

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[42] *Id.* at 501-502.

[43] *Rollo* (G.R. No. 163979), pp. 148, 216.

[44] *Van Dorn, supra* note 40, at 144.

spouse shall likewise have capacity to remarry under Philippine law. (*As amended by E.O. 227*)

In *Republic v. Orbecido III*, we spelled out the twin elements for the applicability of the second paragraph of Art. 26, thus:

> x x x [W]e state the twin elements for the application of Paragraph 2 of Article 26 as follows:
>
> 1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
>
> 2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.
>
> The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.[45]

Both elements obtain in the instant case. We need not belabor further the fact of marriage of Vicente and Rebecca, their citizenship when they wed, and their professed citizenship during the valid divorce proceedings.

Not to be overlooked of course is the fact that Civil Decree No. 406/97 and the Agreement executed on December 14, 1996 bind both Rebecca and Vicente as regards their property relations. The Agreement provided that the ex-couple's conjugal property consisted only their family home, thus:

> 9. That the parties stipulate that the **conjugal property which they acquired during their marriage consists only of the real property** and all the improvements and personal properties therein contained at 502 Acacia Avenue, Ayala Alabang, Muntinlupa, covered by TCT No. 168301 dated Feb. 7, 1990 issued by the Register of Deeds of Makati, Metro Manila registered in the name of Vicente M. Bayot, married to Rebecca M. Bayot, x x x.[46] (Emphasis ours.)

This property settlement embodied in the Agreement was affirmed by the divorce court which, per its second divorce

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[45] G.R. No. 154380, October 5, 2005, 472 SCRA 114, 122.

[46] *Rollo* (G.R. No. 155635), p. 154.

decree, Civil Decree No. 406/97 dated March 4, 1997, ordered that, "THIRD: That the agreement entered into between the parties dated 14th day of December 1996 in Makati City, Philippines shall survive in this Judgment of divorce by reference but not merged and that the parties are hereby ordered and directed to **comply with each and every provision of said agreement**."[47]

Rebecca has not repudiated the property settlement contained in the Agreement. She is thus estopped by her representation before the divorce court from asserting that her and Vicente's conjugal property was not limited to their family home in Ayala Alabang.[48]

No Cause of Action in the Petition for Nullity of Marriage

Upon the foregoing disquisitions, it is abundantly clear to the Court that Rebecca lacks, under the premises, cause of action. *Philippine Bank of Communications v. Trazo* explains the concept and elements of a cause of action, thus:

> A cause of action is an act or omission of one party in violation of the legal right of the other. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following **elements** are present, 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 the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[49]

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[47] *Rollo* (G.R. No. 163979), p. 215.

[48] *Van Dorn*, *supra* note 44.

[49] G.R. No. 165500, August 30, 2006, 500 SCRA 242, 251-252; citations omitted.

One thing is clear from a perusal of Rebecca's underlying petition before the RTC, Vicente's motion to dismiss and Rebecca's opposition thereof, with the documentary evidence attached therein: The petitioner lacks a cause of action for declaration of nullity of marriage, a suit which presupposes the existence of a marriage.

To sustain a motion to dismiss for lack of cause of action, the movant must show that the claim for relief does not exist rather than that a claim has been defectively stated or is ambiguous, indefinite, or uncertain.[50] With the valid foreign divorce secured by Rebecca, there is no more marital tie binding her to Vicente. There is in fine no more marriage to be dissolved or nullified.

The Court to be sure does not lose sight of the legal obligation of Vicente and Rebecca to support the needs of their daughter, Alix. The records do not clearly show how he had discharged his duty, albeit Rebecca alleged that the support given had been insufficient. At any rate, we do note that Alix, having been born on November 27, 1982, reached the majority age on November 27, 2000, or four months before her mother initiated her petition for declaration of nullity. She would now be 26 years old. Hence, the issue of back support, which allegedly had been partly shouldered by Rebecca, is best litigated in a separate civil action for reimbursement. In this way, the actual figure for the support of Alix can be proved as well as the earning capacity of both Vicente and Rebecca. The trial court can thus determine what Vicente owes, if any, considering that support includes provisions until the child concerned shall have finished her education.

Upon the foregoing considerations, the Court no longer need to delve into the issue tendered in G.R. No. 155635, that is, Rebecca's right to support *pendente lite*. As it were, her entitlement to that kind of support hinges on the tenability of her petition under Civil Case No. 01-094 for declaration of nullity

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[50] *Azur v. Provincial Board*, No. L-22333, February 27, 1969, 27 SCRA 50, 57-58.

of marriage. The dismissal of Civil Case No. 01-094 by the CA veritably removed any legal anchorage for, and effectively mooted, the claim for support *pendente lite*.

WHEREFORE, the petition for *certiorari* in *G.R. No. 155635* is hereby *DISMISSED* on the ground of mootness, while the petition for review in *G.R. No. 163979* is hereby *DENIED* for lack of merit. Accordingly, the March 25, 2004 Decision and June 4, 2004 Resolution of the CA in CA-G.R. SP No. 68187 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167622. November 7, 2008]

GREGORIO V. TONGKO, *petitioner, vs.* **THE MANUFACTURERS LIFE INSURANCE CO. (PHILS.), INC. and RENATO A. VERGEL DE DIOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS. — In the determination of whether an employer-employee relationship exists between two parties, this Court applies the four-fold test to determine the existence of the elements of such relationship. In *Pacific Consultants International Asia, Inc. v. Schonfeld*, the Court set out the elements of an employer-employee relationship, thus: Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick:

(a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.

2. ID.; ID.; ID.; NOT ALL FORMS OF CONTROL WOULD ESTABLISH AN EMPLOYER-EMPLOYEE RELATIONSHIP. — An impasse appears to have been reached between the CA and the NLRC on the sole issue of control over an employee's conduct. It bears clarifying that such control not only applies to the work or goal to be done but also to the means and methods to accomplish it. In *Sonza v. ABS-CBN Broadcasting Corporation*, we explained that not all forms of control would establish an employer-employee relationship, to wit: Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The facts of this case fall squarely with the case of *Insular Life Assurance Co., Ltd. vs. NLRC*. In said case, we held that: **Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.**

3. ID.; ID.; ID.; IF SPECIFIC RULES AND REGULATIONS OF INSURANCE COMPANY DIRECTLY AFFECT THE MEANS AND METHODS BY WHICH AGENTS WOULD ACHIEVE THE OBJECTIVES SET BY THE INSURANCE COMPANY, THE AGENTS ARE EMPLOYEES OF THE

INSURANCE COMPANY; CASE AT BAR. — If the specific rules and regulations that are enforced against insurance agents or managers are such that would directly affect the means and methods by which such agents or managers would achieve the objectives set by the insurance company, they are employees of the insurance company. In the instant case, Manulife had the power of control over Tongko that would make him its employee. Several factors contribute to this conclusion. In the Agreement dated July 1, 1977 executed between Tongko and Manulife, it is provided that: The Agent hereby agrees to comply with all regulations and requirements of the Company as herein provided as well as maintain a standard of knowledge and competency in the sale of the Company's products which satisfies those set by the Company and sufficiently meets the volume of new business required of Production Club membership. Under this provision, an agent of Manulife must comply with three (3) requirements: (1) compliance with the regulations and requirements of the company; (2) maintenance of a level of knowledge of the company's products that is satisfactory to the company; and (3) compliance with a quota of new businesses. Among the company regulations of Manulife are the different codes of conduct such as the Agent Code of Conduct, Manulife Financial Code of Conduct, and Manulife Financial Code of Conduct Agreement, which demonstrate the power of control exercised by the company over Tongko. The fact that Tongko was obliged to obey and comply with the codes of conduct was not disowned by respondents. Thus, with the company regulations and requirements alone, the fact that Tongko was an employee of Manulife may already be established. Certainly, these requirements controlled the means and methods by which Tongko was to achieve the company's goals. More importantly, Manulife's evidence establishes the fact that Tongko was tasked to perform administrative duties that establishes his employment with Manulife. In its Comment (Re: Petition for Review dated 15 April 2005) dated August 5, 2005, Manulife attached affidavits of its agents purportedly to support its claim that Tongko, as a Regional Sales Manager, did not perform any administrative functions. An examination of these affidavits would, however, prove the opposite. A comparison of the functions described in the Affidavit dated April 28, 2003 of John D. Chua, Regional Sales Managers; Affidavit dated April 29, 2003 of Amada Toledo, Branch Manager

and Affidavit dated April 28, 2003, Unit Manager; all of Manulife, and those contained in the Agreement with those cited in *Great Pacific Life Assurance Corporation* reveals a striking similarity that would more than support a similar finding as in that case. Thus, there was an employer-employee relationship between the parties. Additionally, it must be pointed out that the fact that Tongko was tasked with recruiting a certain number of agents, in addition to his other administrative functions, leads to no other conclusion that he was an employee of Manulife. In his letter dated November 6, 2001, De Dios harped on the direction of Manulife of becoming a major agency-led distribution company whereby greater agency recruitment is required of the managers, including Tongko. De Dios made it clear that agent recruitment has become the primary means by which Manulife intends to sell more policies. More importantly, it is Tongko's alleged failure to follow this principle of recruitment that led to the termination of his employment with Manulife. With this, it is inescapable that Tongko was an employee of Manulife.

4. ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; BURDEN IS ON EMPLOYER TO PROVE TERMINATION WAS FOR A VALID OR AUTHORIZED CAUSE; CASE AT BAR. — In its Petition for *Certiorari* dated January 7, 2005 filed before the CA, Manulife argued that even if Tongko is considered as its employee, his employment was validly terminated on the ground of gross and habitual neglect of duties, inefficiency, as well as willful disobedience of the lawful orders of Manulife. Manulife failed to cite a single iota of evidence to support its claims. Manulife did not even point out which order or rule that Tongko disobeyed. More importantly, Manulife did not point out the specific acts that Tongko was guilty of that would constitute gross and habitual neglect of duty or disobedience. Manulife merely cited Tongko's alleged "laggard performance," without substantiating such claim, and equated the same to disobedience and neglect of duty. In *Quebec, Sr. v. National Labor Relations Commission*, we ruled that: When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. This burden of proof appropriately lies on the shoulders of the employer and not on the employee because a worker's

job has some of the characteristics of property rights and its therefore within the constitutional mantle of protection. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. Apropos thereto, Art. 277, par. (b), of the Labor Code mandates in explicit terms that the burden of proving the validity of the termination of employment rests on the employer. Failure to discharge this evidential burden would necessarily mean that the dismissal was not justified, and, therefore, illegal. Here, Manulife failed to overcome such burden of proof. It must be reiterated that Manulife even failed to identify the specific acts by which Tongko's employment was terminated much less support the same with substantial evidence. To repeat, mere conjectures cannot work to deprive employees of their means of livelihood. Thus, it must be concluded that Tongko was illegally dismissed.

5. ID.; ID.; ID.; ID.; TWIN NOTICE RULE; CASE AT BAR. — Moreover, as to Manulife's failure to comply with the twin notice rule, it reasons that Tongko not being its employee is not entitled to such notices. Since we have ruled that Tongko is its employee, however, Manulife clearly failed to afford Tongko said notices. Thus, on this ground too, Manulife is guilty of illegal dismissal. In *Quebec, Sr.*, we also stated: Furthermore, not only does our legal system dictate that the reasons for dismissing a worker must be pertinently substantiated, it also mandates that the manner of dismissal must be properly done, otherwise, the termination itself is gravely defective and may be declared unlawful. For breach of the due process requirements, Manulife is liable to Tongko in the amount of Php 30,000 as indemnity in the form of nominal damages.

6. ID.; ID.; ID.; ID.; ILLEGALLY DISMISSED EMPLOYEE ENTITLED TO BACKWAGES AND SEPARATION PAY, IF REINSTATEMENT NO LONGER VIABLE, WITH COMMISSIONS PART OF WAGES FOR DETERMINATION OF SEPARATION PAY. — Article 279 of the Labor Code on security of tenure pertinently provides that: 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. In *Triad Security & Allied Services, Inc. v. Ortega, Jr. (Triad),* we thus stated that an illegally dismissed employee shall be entitled to backwages and separation pay, if reinstatement is no longer viable: As the law now stands, an illegally dismissed employee is entitled to two reliefs, namely: backwages and reinstatement. These are separate and distinct from each other. However, separation pay is granted where reinstatement is no longer feasible because of strained relations between the employee and the employer. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable and backwages. We ruled in *Songco* that commissions are part of wages for the determination of separation pay.

QUISUMBING, *J., dissenting opinion:*

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; MANAGEMENT PREROGATIVES; SPECIFIC RULES AND REGULATIONS OF MANULIFE; NONE NEGATED PETITIONER'S CONTRACTUAL PREROGATIVE TO ADOPT HIS OWN SELLING METHODS OR TO SELL INSURANCE AT HIS OWN TIME AND CONVENIENCE; NO EMPLOYER-EMPLOYEE RELATIONSHIP IN CASE AT BAR. — The company's codes of conduct such as the Agent Code of Conduct, Manulife Financial Code of Conduct, and Manulife Financial Code of Conduct Agreement cannot be justifiably said to establish an employer-employee relationship. These merely served as general guidelines for agents in selling Manulife policies in keeping with ethical principles governing the insurance business and in accordance with the rules promulgated by the Insurance Commission for proper regulation of the industry. None of these rules and regulations negated petitioner's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience. Nor did it overturn company or industry practices. Petitioner made his own strategy on how to generate more insurance sales. In fact, he derived his income from the agents under him through their

sales volume. He was not bound to observe any work schedule or any working hours. He had freedom to adopt his own methods in selling insurance policies, so long as he and his recruited agents meet their quotas.

2. ID.; ID.; ID.; ID.; PETITIONER'S ADMINISTRATIVE FUNCTIONS RELATE TO INSURANCE AGENT'S WORK IN PURSUIT OF HIS CONTRACTUAL OBLIGATIONS; CASE AT BAR. — So too, petitioner's administrative functions are not indicative of control. Such functions which consisted of recruitment of new agents, training, and supervision were exercised over other sales agents and not employees of Manulife. Such functions relate to the insurance agents' work in pursuit of their agency's contractual obligations.

3. ID.; ID.; ID.; ID.; LETTER DATED NOVEMBER 6, 2001 OF MANULIFE'S PRESIDENT DID NOT DICTATE HOW PETITIONER WOULD ACHIEVE THE COMPANY'S GOAL OF AGENCY RECRUITMENT. — Neither can the Letter dated November 6, 2001 addressed by Renato A. Vergel De Dios, Manulife's President and Chief Executive Officer, to petitioner regarding greater agency recruitment be considered as control. While the letter reminded petitioner that his Region was the lowest performer in terms of agency recruitment, it did not dictate how petitioner would achieve this goal. Contrary to the finding of the main opinion, the letter did not contain "an abundance of directives or orders" other than suggesting to petitioner to hire a competent assistant to whom he could unload routine tasks. It is obvious that said assistant would be paid by petitioner as part of his agency's staff, not of the company's office personnel.

4. ID.; ID.; ID.; NO BASIS TO PAY BACKWAGES AND SEPARATION PAY IN VIEW OF NON-EXISTENT EMPLOYER-EMPLOYEE RELATIONSHIP. — Since no employer-employee relationship existed between petitioner and Manulife, there is no basis to award backwages and separation pay to petitioner. There is no reason to apply *Songco v. National Labor Relations Commission* which considered commission as part of the employee's salary in the computation of separation pay. Here, there exists no employer-employee relationship. A contrary ruling will reverse an industry practice long accepted in the insurance business. Such reversal could prove detrimental to the insurance public.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro & Associates for petitioner.
Ponce Enrile Reyes Manalastas for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks the reversal of the March 29, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 88253, entitled *The Manufacturers Life Insurance Co. (Phils.), Inc. v. National Labor Relations Commission and Gregorio V. Tongko*. The assailed decision set aside the Decision dated September 27, 2004 and Resolution dated December 16, 2004 rendered by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 040220-04.

The Facts

Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife) is a domestic corporation engaged in life insurance business. Renato A. Vergel De Dios was, during the period material, its President and Chief Executive Officer. Gregorio V. Tongko started his professional relationship with Manulife on July 1, 1977 by virtue of a Career Agent's Agreement[2] (Agreement) he executed with Manulife.

In the Agreement, it is provided that:

> It is understood and agreed that the Agent is an independent contractor and nothing contained herein shall be construed or interpreted as creating an employer-employee relationship between the Company and the Agent.

---

[1] *Rollo*, pp. 51-87. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle (now retired).

[2] *Id.* at 451-453.

x x x x x x x x x

a) The Agent shall canvass for applications for Life Insurance, Annuities, Group policies and other products offered by the Company, and collect, in exchange for provisional receipts issued by the Agent, money due or to become due to the Company in respect of applications or policies obtained by or through the Agent or from policyholders allotted by the Company to the Agent for servicing, subject to subsequent confirmation of receipt of payment by the Company as evidenced by an Official Receipt issued by the Company directly to the policyholder.

x x x x x x x x x

The Company may terminate this Agreement for any breach or violation of any of the provisions hereof by the Agent by giving written notice to the Agent within fifteen (15) days from the time of the discovery of the breach. No waiver, extinguishment, abandonment, withdrawal or cancellation of the right to terminate this Agreement by the Company shall be construed for any previous failure to exercise its right under any provision of this Agreement.

Either of the parties hereto may likewise terminate his Agreement at any time without cause, by giving to the other party fifteen (15) days notice in writing. x x x

In 1983, Tongko was named as a Unit Manager in Manulife's Sales Agency Organization. In 1990, he became a Branch Manager. As the CA found, Tongko's gross earnings from his work at Manulife, consisting of commissions, persistency income, and management overrides, may be summarized as follows:

January to December 10, 2002	–	₱ 865,096.07
2001	–	6,214,737.11
2000	–	8,003,180.38
1999	–	6,797,814.05
1998	–	4,805,166.34
1997	–	2,822,620.00[3]

The problem started sometime in 2001, when Manulife instituted manpower development programs in the regional sales management level. Relative thereto, De Dios addressed a letter

[3] *Id.* at 53.

dated November 6, 2001[4] to Tongko regarding an October 18, 2001 Metro North Sales Managers Meeting. In the letter, De Dios stated:

The first step to transforming Manulife into a big league player has been very clear – to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.

x x x x x x x x x

The issues around agent recruiting are central to the intended objectives hence the need for a Senior Managers' meeting earlier last month when Kevin O'Connor, SVP – Agency, took to the floor to determine from our senior agency leaders what more could be done to bolster manpower development. At earlier meetings, Kevin had presented information where evidently, your Region was the lowest performer (on a per Manager basis) in terms of recruiting in 2000 and, as of today, continues to remain one of the laggards in this area.

While discussions, in general, were positive other than for certain comments from your end which were perceived to be uncalled for, it became clear that a one-on-one meeting with you was necessary to ensure that you and management, were on the same plane. As gleaned from some of your previous comments in prior meetings (both in group and one-on-one), it was not clear that we were proceeding in the same direction.

Kevin held subsequent series of meetings with you as a result, one of which I joined briefly. In those subsequent meetings you reiterated certain views, the validity of which we challenged and subsequently found as having no basis.

With such views coming from you, I was a bit concerned that the rest of the Metro North Managers may be a bit confused as to the directions the company was taking. For this reason, I sought a meeting with everyone in your management team, including you, to clear the air, so to speak.

---

[4] *Id.* at 295-300.

This note is intended to confirm the items that were discussed at the said Metro North Region's Sales Managers meeting held at the 7/F Conference room last 18 October.

x x x x x x x x x

Issue # 2: "Some Managers are unhappy with their earnings and would want to revert to the position of agents."

This is an often repeated issue you have raised with me and with Kevin. For this reason, I placed the issue on the table before the rest of your Region's Sales Managers to verify its validity. As you must have noted, no Sales Manager came forward on their own to confirm your statement and it took you to name Malou Samson as a source of the same, an allegation that Malou herself denied at our meeting and in your very presence.

This only confirms, Greg, that those prior comments have no solid basis at all. I now believe what I had thought all along, that these allegations were simply meant to muddle the issues surrounding the inability of your Region to meet its agency development objectives!

Issue # 3: "Sales Managers are doing what the company asks them to do but, in the process, they earn less."

x x x x x x x x x

All the above notwithstanding, we had your own records checked and we found that you made a lot more money in the Year 2000 versus 1999. In addition, you also volunteered the information to Kevin when you said that you probably will make more money in the Year 2001 compared to Year 2000. Obviously, your above statement about making "less money" did not refer to you but the way you argued this point had us almost believing that you were spouting the gospel of truth when you were not. x x x

x x x x x x x x x

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we have been discussing these past few weeks, *i.e.*, Manulife's goal to become a major agency-led distribution company in the Philippines. While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.

x x x x x x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

> 1. You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated. This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."
>
> You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.
>
> x x x x x x x x x
>
> 2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x
>
> I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups.

x x x x x x x x x

The above changes can end at this point and they need not go any further. This, however, is entirely dependent upon you. But you have to understand that meeting corporate objectives by everyone is primary and will not be compromised. We are meeting tough challenges next year and I would want everybody on board. Any resistance or holding back by anyone will be dealt with accordingly.

Subsequently, De Dios wrote Tongko another letter dated December 18, 2001,[5] terminating Tongko's services, thus:

> It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O'Connor, some of them with me, as well as group meetings

[5] *Id.* at 301-302.

with your Sales Managers, all these efforts have failed in helping you align your directions with Management's avowed agency growth policy.

x x x x x x x x x

On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this notice of termination of your Agency Agreement with us effective fifteen days from the date of this letter.

Therefrom, Tongko filed a Complaint dated November 25, 2002 with the NLRC against Manulife for illegal dismissal. The case, docketed as NLRC NCR Case No. 11-10330-02, was raffled to Labor Arbiter Marita V. Padolina.

In the Complaint, Tongko, in a bid to establish an employer-employee relationship, alleged that De Dios gave him specific directives on how to manage his area of responsibility in the latter's letter dated November 6, 2001. He further claimed that Manulife exercised control over him as follows:

Such control was certainly exercised by respondents over the herein complainant. It was Manulife who hired, promoted and gave various assignments to him. It was the company who set objectives as regards productions, recruitment, training programs and all activities pertaining to its business. Manulife prescribed a Code of Conduct which would govern in minute detail all aspects of the work to be undertaken by employees, including the sales process, the underwriting process, signatures, handling of money, policyholder service, confidentiality, legal and regulatory requirements and grounds for termination of employment. The letter of Mr. De Dios dated 06 November 2001 left no doubt as to who was in control. The subsequent termination letter dated 18 December 2001 again established in no uncertain terms the authority of the herein respondents to control the employees of Manulife. Plainly, the respondents wielded control not only as to the ends to be achieved but the ways and means of attaining such ends.[6]

Tongko bolstered his argument by citing *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*[7] and *Great Pacific Life*

[6] *Id.* at 310.

[7] G.R. No. 119930, March 12, 1998, 287 SCRA 476.

Assurance Corporation v. NLRC,[8] which Tongko claimed to be similar to the instant case.

Tongko further claimed that his dismissal was without basis and that he was not afforded due process. He also cited the Manulife Code of Conduct by which his actions were controlled by the company.

Manulife then filed a Position Paper with Motion to Dismiss dated February 27, 2003,[9] in which it alleged that Tongko is not its employee, and that it did not exercise "control" over him. Thus, Manulife claimed that the NLRC has no jurisdiction over the case.

In a Decision dated April 15, 2004, Labor Arbiter Marita V. Padolina dismissed the complaint for lack of an employer-employee relationship. Padolina found that applying the four-fold test in determining the existence of an employer-employee relationship, none was found in the instant case. The dispositive portion thereof states:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of jurisdiction, there being no employer-employee relationship between the parties.
>
> SO ORDERED.

Tongko appealed the arbiter's Decision to the NLRC which reversed the same and rendered a Decision dated September 27, 2004 finding Tongko to have been illegally dismissed.

The NLRC's First Division, while finding an employer-employee relationship between Manulife and Tongko applying the four-fold test, held Manulife liable for illegal dismissal. It further stated that Manulife exercised control over Tongko as evidenced by the letter dated November 6, 2001 of De Dios and wrote:

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[8] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

[9] *Rollo*, pp. 430-450.

The above-mentioned letter shows the extent to which respondents controlled complainant's manner and means of doing his work and achieving the goals set by respondents. The letter shows how respondents concerned themselves with the manner complainant managed the Metro North Region as Regional Sales Manager, to the point that respondents even had a say on how complainant interacted with other individuals in the Metro North Region. The letter is in fact replete with comments and criticisms on how complainant carried out his functions as Regional Sales Manager.

More importantly, the letter contains an abundance of directives or orders that are intended to directly affect complainant's authority and manner of carrying out his functions as Regional Sales Manager.[10] x x x

Additionally, the First Division also ruled that:

Further evidence of [respondents'] control over complainant can be found in the records of the case. [These] are the different codes of conduct such as the Agent Code of Conduct, the Manulife Financial Code of Conduct, and the Manulife Financial Code of Conduct Agreement, which serve as the foundations of the power of control wielded by respondents over complainant that is further manifested in the different administrative and other tasks that he is required to perform. These codes of conduct corroborate and reinforce the display of respondents' power of control in their 06 November 2001 Letter to complainant.[11]

The *fallo* of the September 27, 2004 Decision reads:

WHEREFORE, premises considered, the appealed Decision is hereby reversed and set aside. We find complainant to be a regular employee of respondent Manulife and that he was illegally dismissed from employment by respondents.

In lieu of reinstatement, respondent Manulife is hereby ordered to pay complainant separation pay as above set forth. Respondent Manulife is further ordered to pay complainant backwages from the time he was dismissed on 02 January 2002 up to the finality of this decision also as indicated above.

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[10] *Id.* at 361.

[11] *Id.* at 363-364.

x x x x x x x x x

All other claims are hereby dismissed for utter lack of merit.

From this Decision, Manulife filed a motion for reconsideration which was denied by the NLRC First Division in a Resolution dated December 16, 2004.[12]

Thus, Manulife filed an appeal with the CA docketed as CA-G.R. SP No. 88253. Thereafter, the CA issued the assailed Decision dated March 29, 2005, finding the absence of an employer-employee relationship between the parties and deeming the NLRC with no jurisdiction over the case. The CA arrived at this conclusion while again applying the four-fold test. The CA found that Manulife did not exercise control over Tongko that would render the latter an employee of Manulife. The dispositive portion reads:

WHEREFORE, premises considered, the present petition is hereby GRANTED and the writ prayed for accordingly GRANTED. The assailed Decision dated September 27, 2004 and Resolution dated December 16, 2004 of the National Labor Relations Commission in NLRC NCR Case No. 00-11-10330-2002 (NLRC NCR CA No. 040220-04) are hereby ANNULLED and SET ASIDE. The Decision dated April 15, 2004 of Labor Arbiter Marita V. Padolina is hereby REINSTATED.

Hence, Tongko filed this petition and presented the following issues:

A

The Court of Appeals committed grave abuse of discretion in granting respondents' petition for *certiorari*.

B

The Court of Appeals committed grave abuse of discretion in annulling and setting aside the Decision dated September 27, 2004 and Resolution dated December 16, 2004 in finding that there is no employer-employee relationship between petitioner and respondent.

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[12] *Id.* at 375-377.

C

The Court of Appeals committed grave abuse of discretion in annulling and setting aside the Decision dated September 27, 2004 and Resolution dated December 16, 2004 which found petitioner to have been illegally dismissed and ordered his reinstatement with payment of backwages.[13]

Restated, the issues are: (1) Was there an employer-employee relationship between Manulife and Tongko? and (2) If yes, was Manulife guilty of illegal dismissal?

The Court's Ruling

This petition is meritorious.

Tongko Was An Employee of Manulife

The basic issue of whether or not the NLRC has jurisdiction over the case resolves itself into the question of whether an employer-employee relationship existed between Manulife and Tongko. If no employer-employee relationship existed between the two parties, then jurisdiction over the case properly lies with the Regional Trial Court.

In the determination of whether an employer-employee relationship exists between two parties, this Court applies the four-fold test to determine the existence of the elements of such relationship. In *Pacific Consultants International Asia, Inc. v. Schonfeld*, the Court set out the elements of an employer-employee relationship, thus:

Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also

[13] *Id.* at 16.

as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.[14]

The NLRC, for its part, applied the four-fold test and found the existence of all the elements and declared Tongko an employee of Manulife. The CA, on the other hand, found that the element of control as an indicator of the existence of an employer-employee relationship was lacking in this case. The NLRC and the CA based their rulings on the same findings of fact but differed in their interpretations.

The NLRC arrived at its conclusion, first, on the basis of the letter dated November 6, 2001 addressed by De Dios to Tongko. According to the NLRC, the letter contained "an abundance of directives or orders that are intended to directly affect complainant's authority and manner of carrying out his functions as Regional Sales Manager." It enumerated these "directives" or "orders" as follows:

1. You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated. x x x

x x x x x x x x x

This assistant should be hired immediately.

2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion x x x.

x x x x x x x x x

I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. x x x

3. Any resistance or holding back by anyone will be dealt with accordingly.

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[14] G.R. No. 166920, February 19, 2007, 516 SCRA 209, 228.

4. I have been straightforward in this my letter and I know that we can continue to work together . . . but it will have to be on my terms. Anything else is unacceptable!

The NLRC further ruled that the different codes of conduct that were applicable to Tongko served as the foundations of the power of control wielded by Manulife over Tongko that is further manifested in the different administrative and other tasks that he was required to perform.

The NLRC also found that Tongko was required to render exclusive service to Manulife, further bolstering the existence of an employer-employee relationship.

Finally, the NLRC ruled that Tongko was integrated into a management structure over which Manulife exercised control, including the actions of its officers. The NLRC held that such integration added to the fact that Tongko did not have his own agency belied Manulife's claim that Tongko was an independent contractor.

The CA, however, considered the finding of the existence of an employer-employee relationship by the NLRC as far too sweeping having as its only basis the letter dated November 6, 2001 of De Dios. The CA did not concur with the NLRC's ruling that the elements of control as pointed out by the NLRC are "sufficient indicia of control that negates independent contractorship and conclusively establish an employer-employee relationship between"[15] Tongko and Manulife. The CA ruled that there is no employer-employee relationship between Tongko and Manulife.

An impasse appears to have been reached between the CA and the NLRC on the sole issue of control over an employee's conduct. It bears clarifying that such control not only applies to the work or goal to be done but also to the means and methods to accomplish it.[16] In *Sonza v. ABS-CBN Broadcasting*

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[15] *Supra* note 1, at 80.

[16] *Lakas ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, G.R. No. 162833, June 15, 2007, 524 SCRA 690, 695.

Corporation, we explained that not all forms of control would establish an employer-employee relationship, to wit:

> Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The facts of this case fall squarely with the case of *Insular Life Assurance Co., Ltd. vs. NLRC*. In said case, we held that:
>
> > **Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.**[17] (Emphasis supplied.)

We ruled in *Insular Life Assurance Co., Ltd. v. NLRC* (*Insular*) that:

> It is, therefore, usual and expected for an insurance company to promulgate a set of rules to guide its commission agents in selling its policies that they may not run afoul of the law and what it requires or prohibits. Of such a character are the rules which prescribe the qualifications of persons who may be insured, subject insurance applications to processing and approval by the Company, and also reserve to the Company the determination of the premiums to be paid and the schedules of payment. None of these really invades the agent's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience, hence cannot justifiably be said to establish an employer-employee relationship between him and the company.[18]

Hence, we ruled in *Insular* that no employer-employee relationship existed therein. However, such ruling was tempered with the qualification that had there been evidence that the

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[17] G.R. No. 138051, June 10, 2004, 431 SCRA 583, 604.

[18] G.R. No. 84484, November 15, 1989, 179 SCRA 459, 465.

company promulgated rules or regulations that effectively controlled or restricted an insurance agent's choice of methods or the methods themselves in selling insurance, an employer-employee relationship would have existed. In other words, the Court in *Insular* in no way definitively held that insurance agents are not employees of insurance companies, but rather made the same a case-to-case basis. We held:

> The respondents limit themselves to pointing out that Basiao's contract with the Company bound him to observe and conform to such rules and regulations as the latter might from time to time prescribe. **No showing has been made that any such rules or regulations were in fact promulgated, much less that any rules existed or were issued which effectively controlled or restricted his choice of methods or the methods themselves of selling insurance. Absent such showing, the Court will not speculate that any exceptions or qualifications were imposed on the express provision of the contract leaving Basiao ". . . free to exercise his own judgment as to the time, place and means of soliciting insurance."**[19] (Emphasis supplied.)

There is no conflict between our rulings in *Insular* and in *Great Pacific Life Assurance Corporation*. We said in the latter case:

> [I]t cannot be gainsaid that Grepalife had control over private respondents' performance as well as the result of their efforts. **A cursory reading of their respective functions as enumerated in their contracts reveals that the company practically dictates the manner by which their jobs are to be carried out.** For instance, the District Manager must properly account, record and document the company's funds spot-check and audit the work of the zone supervisors, conserve the company's business in the district through 'reinstatements,' follow up the submission of weekly remittance reports of the debit agents and zone supervisors, preserve company property in good condition, train understudies for the position of district manager, and maintain his quota of sales (the failure of which is a ground for termination). On the other hand, a zone supervisor must direct and supervise the sales activities of the debit agents under him, conserve company property through "reinstatements", undertake and discharge the functions of absentee debit agents, spot-

[19] *Id.* at 466-467.

check the records of debit agents, and insure proper documentation of sales and collections by the debit agents.[20] (Emphasis supplied.)

Based on the foregoing cases, if the specific rules and regulations that are enforced against insurance agents or managers are such that would directly affect the means and methods by which such agents or managers would achieve the objectives set by the insurance company, they are employees of the insurance company.

In the instant case, Manulife had the power of control over Tongko that would make him its employee. Several factors contribute to this conclusion.

In the Agreement dated July 1, 1977 executed between Tongko and Manulife, it is provided that:

> The Agent hereby agrees to comply with all regulations and requirements of the Company as herein provided as well as maintain a standard of knowledge and competency in the sale of the Company's products which satisfies those set by the Company and sufficiently meets the volume of new business required of Production Club membership.[21]

Under this provision, an agent of Manulife must comply with three (3) requirements: (1) compliance with the regulations and requirements of the company; (2) maintenance of a level of knowledge of the company's products that is satisfactory to the company; and (3) compliance with a quota of new businesses.

Among the company regulations of Manulife are the different codes of conduct such as the Agent Code of Conduct, Manulife Financial Code of Conduct, and Manulife Financial Code of Conduct Agreement, which demonstrate the power of control exercised by the company over Tongko. The fact that Tongko was obliged to obey and comply with the codes of conduct was not disowned by respondents.

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[20] *Supra* note 8, at 698-699.

[21] *Rollo*, p. 451.

Thus, with the company regulations and requirements alone, the fact that Tongko was an employee of Manulife may already be established. Certainly, these requirements controlled the means and methods by which Tongko was to achieve the company's goals.

More importantly, Manulife's evidence establishes the fact that Tongko was tasked to perform administrative duties that establishes his employment with Manulife.

In its Comment (Re: Petition for Review dated 15 April 2005) dated August 5, 2005, Manulife attached affidavits of its agents purportedly to support its claim that Tongko, as a Regional Sales Manager, did not perform any administrative functions. An examination of these affidavits would, however, prove the opposite.

In an Affidavit dated April 28, 2003,[22] John D. Chua, a Regional Sales Manager of Manulife, stated:

> 4. On September 1, 1996, my services were engaged by Manulife as an Agency Regional Sales Manager ("RSM") for Metro South Region pursuant to an Agency Contract. As such RSM, I have the following functions:
>
> 1. Refer and recommend prospective agents to Manulife
> 2. Coach agents to become productive
> 3. Regularly meet with, and coordinate activities of agents affiliated to my region.

While Amada Toledo, a Branch Manager of Manulife, stated in her Affidavit dated April 29, 2003[23] that:

> 3. In January 1997, I was assigned as a Branch Manager ("BM") of Manulife for the Metro North Sector;
>
> 4. As such BM, I render the following services:
>
> a. Refer and recommend prospective agents to Manulife;
> b. Train and coordinate activities of other commission agents;

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[22] *Id*. at 590.

[23] *Id*. at 592.

c. Coordinate activities of Agency Managers who, in turn, train and coordinate activites of other commission agents;
d. Achieve agreed production objectives in terms of Net Annualized Commissions and Case Count and recruitment goals; and
e. Sell the various products of Manulife to my personal clients.

While Ma. Lourdes Samson, a Unit Manager of Manulife, stated in her Affidavit dated April 28, 2003[24] that:

3. In 1977, I was assigned as a Unit Manager ("UM") of North Peaks Unit, North Star Branch, Metro North Region;

4. As such UM, I render the following services:

a. To render or recommend prospective agents to be licensed, trained and contracted to sell Manulife products and who will be part of my Unit;
b. To coordinate activities of the agents under my Unit in their daily, weekly and monthly selling activities, making sure that their respective sales targets are met;
c. To conduct periodic training sessions for my agents to further enhance their sales skills.
d. To assist my agents with their sales activities by way of joint fieldwork, consultations and one-on-one evaluation and analysis of particular accounts.
e. To provide opportunities to motivate my agents to succeed like conducting promos to increase sales activities and encouraging them to be involved in company and industry activities.
f. To provide opportunities for professional growth to my agents by encouraging them to be a member of the LUCAP (Life Underwriters Association of the Philippines).

A comparison of the above functions and those contained in the Agreement with those cited in *Great Pacific Life Assurance Corporation*[25] reveals a striking similarity that would more than

[24] *Id.* at 593.

[25] *Supra*.

support a similar finding as in that case. Thus, there was an employer-employee relationship between the parties.

Additionally, it must be pointed out that the fact that Tongko was tasked with recruiting a certain number of agents, in addition to his other administrative functions, leads to no other conclusion that he was an employee of Manulife.

In his letter dated November 6, 2001, De Dios harped on the direction of Manulife of becoming a major agency-led distribution company whereby greater agency recruitment is required of the managers, including Tongko. De Dios made it clear that agent recruitment has become the primary means by which Manulife intends to sell more policies. More importantly, it is Tongko's alleged failure to follow this principle of recruitment that led to the termination of his employment with Manulife. With this, it is inescapable that Tongko was an employee of Manulife.

Tongko Was Illegally Dismissed

In its Petition for *Certiorari* dated January 7, 2005[26] filed before the CA, Manulife argued that even if Tongko is considered as its employee, his employment was validly terminated on the ground of gross and habitual neglect of duties, inefficiency, as well as willful disobedience of the lawful orders of Manulife. Manulife stated:

> In the instant case, private respondent, despite the written reminder from Mr. De Dios refused to shape up and altogether disregarded the latter's advice resulting in his laggard performance clearly indicative of his willful disobedience of the lawful orders of his superior. x x x
>
> x x x x x x x x x
>
> As private respondent has patently failed to perform a very fundamental duty, and that is to yield obedience to all reasonable rules, orders and instructions of the Company, as well as gross failure to reach at least minimum quota, the termination of his engagement from Manulife is highly warranted and therefore, there is no illegal dismissal to speak of.

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[26] *Rollo*, pp. 88-162.

It is readily evident from the above-quoted portions of Manulife's petition that it failed to cite a single iota of evidence to support its claims. Manulife did not even point out which order or rule that Tongko disobeyed. More importantly, Manulife did not point out the specific acts that Tongko was guilty of that would constitute gross and habitual neglect of duty or disobedience. Manulife merely cited Tongko's alleged "laggard performance," without substantiating such claim, and equated the same to disobedience and neglect of duty.

We cannot, therefore, accept Manulife's position.

In *Quebec, Sr. v. National Labor Relations Commission*, we ruled that:

> When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. This burden of proof appropriately lies on the shoulders of the employer and not on the employee because a worker's job has some of the characteristics of property rights and is therefore within the constitutional mantle of protection. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> Apropos thereto, Art. 277, par. (b), of the Labor Code mandates in explicit terms that the burden of proving the validity of the termination of employment rests on the employer. Failure to discharge this evidential burden would necessarily mean that the dismissal was not justified, and, therefore, illegal.[27]

We again ruled in *Times Transportation Co., Inc. v. National Labor Relations Commission* that:

> The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified, and, therefore, illegal. Unsubstantiated suspicions, accusations and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt,

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[27] G.R. No. 123184, January 22, 1999, 301 SCRA 627, 633.

such cases should be resolved in favor of labor, pursuant to the social justice policy of our labor laws and Constitution.[28]

This burden of proof was clarified in *Community Rural Bank of San Isidro (N.E.), Inc. v. Paez* to mean substantial evidence, to wit:

> The Labor Code provides that an employer may terminate the services of an employee for just cause and this must be supported by substantial evidence. The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[29]

Here, Manulife failed to overcome such burden of proof. It must be reiterated that Manulife even failed to identify the specific acts by which Tongko's employment was terminated much less support the same with substantial evidence. To repeat, mere conjectures cannot work to deprive employees of their means of livelihood. Thus, it must be concluded that Tongko was illegally dismissed.

Moreover, as to Manulife's failure to comply with the twin notice rule, it reasons that Tongko not being its employee is not entitled to such notices. Since we have ruled that Tongko is its employee, however, Manulife clearly failed to afford Tongko said notices. Thus, on this ground too, Manulife is guilty of illegal dismissal. In *Quebec, Sr.*, we also stated:

> Furthermore, not only does our legal system dictate that the reasons for dismissing a worker must be pertinently substantiated, it also mandates that the manner of dismissal must be properly done, otherwise, the termination itself is gravely defective and may be declared unlawful.[30]

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[28] G.R. Nos. 148500-01, November 29, 2006, 508 SCRA 435, 443.

[29] G.R. No. 158707, November 27, 2006, 508 SCRA 245, 257-258.

[30] *Supra* at 634.

For breach of the due process requirements, Manulife is liable to Tongko in the amount of Php 30,000 as indemnity in the form of nominal damages.[31]

Finally, Manulife raises the issue of the correctness of the computation of the award to Tongko made by the NLRC by claiming that *Songco v. National Labor Relations Commission*[32] is inapplicable to the instant case, considering that Songco was dismissed on the ground of retrenchment.

An examination of *Songco* reveals that it may be applied to the present case. In that case, Jose Songco was a salesman of F.E. Zuellig (M), Inc. which terminated the services of Songco on the ground of retrenchment due to financial losses. The issue raised to the Court, however, was whether commissions are considered as part of wages in order to determine separation pay. Thus, the fact that Songco was dismissed due to retrenchment does not hamper the application thereof to the instant case. What is pivotal is that we ruled in *Songco* that commissions are part of wages for the determination of separation pay.

Article 279 of the Labor Code on security of tenure pertinently provides that:

> 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.

In *Triad Security & Allied Services, Inc. v. Ortega, Jr.* (*Triad*), we thus stated that an illegally dismissed employee shall be entitled to backwages and separation pay, if reinstatement is no longer viable:

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[31] *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617.

[32] G.R. Nos. 50999-51000, March 23, 1990, 183 SCRA 610.

As the law now stands, an illegally dismissed employee is entitled to two reliefs, namely: backwages and reinstatement. These are separate and distinct from each other. However, separation pay is granted where reinstatement is no longer feasible because of strained relations between the employee and the employer. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable and backwages.[33]

Taking into consideration the cases of *Songco* and *Triad*, we find correct the computation of the NLRC that the monthly gross wage of Tongko in 2001 was Php 518,144.76. For having been illegally dismissed, Tongko is entitled to reinstatement with full backwages under Art. 279 of the Labor Code. Due to the strained relationship between Manulife and Tongko, reinstatement, however, is no longer advisable. Thus, Tongko will be entitled to backwages from January 2, 2002 (date of dismissal) up to the finality of this decision. Moreover, Manulife will pay Tongko separation pay of one (1) month salary for every year of service that is from 1977 to 2001 amounting to Php 12,435,474.24, considering that reinstatement is not feasible. Tongko shall also be entitled to an award of attorney's fees in the amount of ten percent (10%) of the aggregate amount of the above awards.

WHEREFORE, the petition is hereby *GRANTED*. The assailed March 29, 2005 Decision of the CA in CA-G.R. SP No. 88253 is *REVERSED* and *SET ASIDE*. The Decision dated September 27, 2004 of the NLRC is *REINSTATED* with the following modifications:

Manulife shall pay Tongko the following:

(1) Full backwages, inclusive of allowances and other benefits or their monetary equivalent from January 2, 2002 up to the finality of this Decision;

(2) Separation pay of one (1) month salary for every year of service from 1977 up to 2001 amounting to Php 12,435,474.24;

(3) Nominal damages of Php 30,000 as indemnity for violation of the due process requirements; and

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[33] G.R. No. 160871, February 6, 2006, 481 SCRA 591, 605.

(4) Attorney's fees equivalent to ten percent (10%) of the aforementioned backwages and separation pay.

Costs against respondent Manulife.

SO ORDERED.

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

Quisumbing, J. (Chairperson), see dissenting opinion.

Tinga, J., joins *J.* Quisumbing's dissent.

DISSENTING OPINION

QUISUMBING, *J.*:

With due respect, I cannot concur in the majority opinion. I vote to deny the petition and affirm the decision of the Court of Appeals holding that the National Labor Relations Commission had no jurisdiction over this case due to the absence of an employer-employee relationship between petitioner Gregorio V. Tongko and respondent Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife).

The majority opinion states that Manulife had the power of control over petitioner that would make him its employee. It advances several reasons that do not persuade me.

In my view, two points require stressing: (1) Manulife has no power of control over petitioner in the pursuit of his own business; and (2) petitioner is compensated through sales agency commissions and not through fixed wages or salary.

Time and again, the Court has indeed applied the "four-fold" test in determining the existence of an employer-employee relationship. This test considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last being the most important element.[1]

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[1] *AFP Mutual Benefit Association, Inc. v. NLRC*, G.R. No. 102199, January 28, 1997, 267 SCRA 47, 57.

The difficulty lies in correctly assessing if certain factors or elements properly indicate the presence of control.[2] The company's codes of conduct such as the Agent Code of Conduct, Manulife Financial Code of Conduct, and Manulife Financial Code of Conduct Agreement cannot be justifiably said to establish an employer-employee relationship. These merely served as general guidelines for agents in selling Manulife policies in keeping with ethical principles governing the insurance business and in accordance with the rules promulgated by the Insurance Commissioner for proper regulation of the industry. None of these rules and regulations negated petitioner's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience.[3] Nor did it overturn company or industry practices. Petitioner made his own strategy on how to generate more insurance sales. In fact, he derived his income from the agents under him through their sales volume. He was not bound to observe any work schedule or any working hours. He had freedom to adopt his own methods in selling insurance policies, so long as he and his recruited agents meet their quotas.

So too, petitioner's administrative functions are not indicative of control. Such functions which consisted of recruitment of new agents, training, and supervision were exercised over other sales agents and not employees of Manulife. Such functions relate to the insurance agents' work in pursuit of their agency's contractual obligations.

Neither can the Letter dated November 6, 2001[4] addressed by Renato A. Vergel De Dios, Manulife's President and Chief Executive Officer, to petitioner regarding greater agency recruitment be considered as control. While the letter reminded petitioner that his Region was the lowest performer in terms of agency recruitment, it did not dictate how petitioner would achieve this goal. Contrary to the finding of the main opinion,[5] the letter

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[2] *Ibid*.

[3] *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 465.

[4] *Rollo*, pp. 395-400.

[5] Page 11 thereof.

did not contain "an abundance of directives or orders" other than suggesting to petitioner to hire a competent assistant to whom he could unload routine tasks. It is obvious that said assistant would be paid by petitioner as part of his agency's staff, not of the company's office personnel.

Clearly, following industry practice, petitioner had never been an employee of Manulife. He is an independent contractor as stated in the Career Agent's Agreement. Although he was eventually promoted as Regional Sales Manager, the Agreement subsisted since he still received commissions from insurance he directly sold to third persons aside from the override commissions he received from his own recruited agents' sales. The Agreement was never changed or altered by the parties.

Anent petitioner's compensation, he was paid through commissions from premium payments instead of fixed wages or salary. Petitioner's commissions varied, based on the computed premiums paid in full and actually received on policies obtained through his agency. His summary of commission, persistency, and management overrides constituted the income earned from business activities, not traditional office employment by Manulife, as follows:

2001 -	₱6,214,737.11
2000 -	₱8,003,180.38
1999 -	₱6,797,814.05
1998 -	₱4,805,166.34
1997 -	₱2,822,620.00[6]

Indeed, petitioner's earnings by way of commissions varied, depending on the clientele or those who availed of the insurance policies he procured. As also noted by the Labor Arbiter, his annual income was duly reflected in petitioner's income tax returns as agency earnings from which were deducted operating expenses and taxes withheld at source by Manulife. His returns did not reflect regular wages or salaries paid by the company.

Since no employer-employee relationship existed between petitioner and Manulife, there is no basis to award backwages

[6] *Rollo*, p. 53.

and separation pay to petitioner. There is no reason to apply *Songco v. National Labor Relations Commission*[7] which considered commission as part of the employee's salary in the computation of separation pay. Here, there exists no employer-employee relationship. A contrary ruling will reverse an industry practice long accepted in the insurance business. Such reversal could prove detrimental to the insurance public.

To reiterate, the present case does not involve an employer-employee relationship which warrants the application of the Labor Code provisions; rather, it calls for the implementation of the Career Agent's Agreement that should be construed in an ordinary civil action.

I vote to *DENY* the petition.

SECOND DIVISION

[G.R. No. 180597. November 7, 2008]

RAUL BASILIO D. BOAC, RAMON B. GOLONG, CESAR F. BELTRAN, and ROGER A. BASADRE, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; RESTS ON PROSECUTOR TO PROVE GUILT BEYOND REASONABLE DOUBT OF ACCUSED; IN CASE AT BAR, PROSECUTION FAILED TO SHOW THAT THE PETITIONERS COMMITTED THE ACTS PROHIBITED BY SECTION 2203 OF THE TARIFF AND CUSTOMS CODE. — The prosecution has the burden of proving the guilt

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[7] G.R. Nos. 50999-51000, March 23, 1990, 183 SCRA 610.

of the accused beyond reasonable doubt. In this case, it is clear that petitioners neither searched the container vans nor effected seizure and arrest. The testimony of Customs Broker Amolata, the prosecution witness, supports this finding. It should be noted that the container vans were brought to the consignee's warehouse and not to the CIDG headquarters. On July 28, 2004, the container vans were searched but not by petitioners, as testified to by petitioners Beltran and Golong. The prosecution does not rebut the testimonies of petitioners. In fact, when questioned by Associate Justice Norberto Y. Geraldez, the prosecution witness, Customs Broker Amolata, attested to the same fact. x x x The search was actually conducted by Customs Police Yamit and Godoy on July 28, 2004. The Customs Police held the keys of the vans, as attested to by Amolata. Furthermore, the vans were opened without the presence of the PNP-CIDG's team leader, Inspector Golong. x x x The search was under the direction of the Customs Police because when the Customs Police decided to stop the search, petitioners acceded and left the premises. x x x The testimony of Boac which Golong corroborated, was not disputed by the prosecution. It is thus very clear that the search was not done by petitioners but by the Customs Police. Petitioners did not seize anything nor arrested anybody . They merely observed the search which they requested to be undertaken to check for contrabands. Notably, the consignee did not file any complaint against petitioners. The information charged petitioners for illegally flagging down, searching, and seizing the three container vans on July 27, 2004. Petitioners, however, could not also be held liable for these acts. It is a fact that no search and seizure of the vans was done on the night of July 27, 2004. The act of flagging down the vehicles is not among those proscribed by Sec. 2203 of the Tariff and Customs Code. Mere flagging down of the container vans is not punishable under the said law. Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. In this case, the prosecution failed to show that petitioners committed the acts prohibited by Sec. 2203 of the Tariff and Customs Code. There is no such evidence, testimonial or otherwise, that identifies

petitioners as responsible for the alleged illegal search. Hence, acquittal is in order.

APPEARANCES OF COUNSEL

Cruz Enverga & Lucero for petitioners.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This appeal by *certiorari* under Rule 45 seeks to set aside the August 16, 2007 Decision[1] of the Sandiganbayan, finding petitioners guilty beyond reasonable doubt of violating Section 2203 of the Tariff and Customs Code. Petitioners' motion for reconsideration was denied by the court through its November 14, 2007 Resolution.[2]

The Facts

Raul Basilio Boac, Ramon Betuin Golong, Cesar Fantone Beltran, Roger Alcantara Basadre, and Benjamin Castaneda Alfonso are members of the Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG). They hold the ranks of Police Senior Superintendent, Police Inspector, Senior Police Officer II, Senior Police Officer II, and Senior Police Officer I, respectively. In an information dated October 18, 2005, they were charged with violation of Sec. 2203 in relation to Sec. 3612 of the Tariff and Customs Code, as follows:

That on or before July 27, 2004 or prior or subsequent thereto in Cagayan de Oro City and within the jurisdiction of this Honorable Court, above-named accused P/SR. SUPT. RAUL BASILIO DONIDA BOAC, SG-26, P/INSP. RAMON BETUIN GOLONG, SG-22, SPO2

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[1] *Rollo*, pp. 27-39. Penned by Associate Justice Norberto Y. Geraldez and concurred in by Associate Justices Godofredo L. Legaspi and Efren N. De la Cruz.

[2] *Id.* at 41-43.

CESAR FANTONE BELTRAN, SG-17, SPO2 ROGER ALCANTARA BASADRE, SG-17, SPO1 BENJAMIN CASTANEDA ALFONSO, SG-16, all public officers being then members of the Philippine National Police, taking advantage of their official positions, while committing the offense in relation to office, with grave abuse thereof, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and criminally, without lawful authority or delegation from the Collector of Customs, flag down, search and seize three (3) container vans consigned to Japan Trak surplus (Kakiage Surplus).

CONTRARY TO LAW.[3]

Boac, Golong, and Beltran pleaded not guilty on January 23, 2006; Basadre entered the same plea on February 20, 2006. Alfonso remained at large. At pretrial, the prosecution and defense stipulated that in the evening of July 27, 2004, Golong, Beltran, Basadre, and Alfonso, upon the order of Boac, but without the authority from and coordination with the Bureau of Customs (BOC), Collection District X, Cagayan de Oro City, flagged down three container vans consigned to Kakiage Surplus. The said vans were allowed to be brought to the warehouse of the consignee and the actual search was done on July 28, 2004.[4]

Atty. Lourdes V. Mangaoang, then Customs District Collector of Cagayan de Oro City, testified that the CIDG operatives (herein petitioners) did not have a written authority from the Commissioner of Customs or the District Collector. According to her, Golong claimed that they had clear orders from Boac to open and search the vans. She instructed her personnel to open the vans only to show that there was nothing illegal in their contents. She prepared a letter of protest addressed to Boac but it was ignored; hence, she filed the instant case.[5]

Dario C. Amolata, license customs broker, testified that he went to see the vans after learning that they were flagged down by petitioners. The following day, he went to the warehouse

[3] *Id.* at 28.

[4] *Id.* at 29.

[5] *Id.* at 30.

with Melvin Yamit and Richard Godoy of the Enforcement and Security Services of the BOC, Region X to witness the inspection of the vans. No contrabands were found upon inspection. Yamit corroborated the testimony of Amolata.[6]

For the defense, Boac testified that on July 27, 2004, he was in Manila on leave. Beltran allegedly informed him that three container vans with contrabands were released by the BOC; thus, Boac instructed Golong and his team to flag down the subject vans. After the inspection of the vans and without finding any contraband, Boac directed Golong to leave the premises. Golong corroborated Boac's testimony, adding that he and his team did not open the vans on July 27, 2004 because there were no representatives from the BOC. Beltran testified that in the morning of July 27, 2004, Voltaire Sabelina, an appraiser from the BOC, informed him that three container vans will be released from the pier around 5:00 p.m. It was alleged that inside the two of the uninspected containers were television sets from Japan.[7]

Ruling of the Sandiganbayan

In convicting petitioners, the Sandiganbayan applied the following provisions of the Tariff and Customs Code:

Section 602. The Bureau of Customs, headed by a Commissioner, has, among other things, the following general duties, powers and jurisdiction, in respect to the levy of customs duties, to wit:

x x x x x x x x x

b. The prevention and suppression of smuggling and other frauds upon the customs;

x x x x x x x x x

j. The enforcement of the tariff and customs laws and all other laws, rules and regulations in relation to the tariff and customs administration.

Sec. 2203. Persons Having Police Authority. — For the enforcement of the tariff and customs laws, the following persons are authorized

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

[7] *Id.* at 32-33.

to effect searches, seizures and arrests conformably with the provisions of said laws.

x x x x x x x x x

d. Officers generally empowered by law to effect arrests and execute processes of the courts, when acting under the direction of the Collector.

Sec. 3612. Violations of Tariff and Customs Laws and Regulations in General. — Any person who violates a provision of this Code or regulations pursuant thereto, for which delinquency no specific penalty is provided, shall be punished by a fine of not more than one thousand pesos or by imprisonment for not more than one year, or both. If the offender is an alien, he shall be deported after serving the sentence; and if the offender is a public official or employee, he shall suffer disqualification to hold public office, to vote and participate in any public election for ten years.

The anti-graft court ruled that petitioners belong to the category of officers in Sec. 2203(d); thus, they needed a written authority from the Commissioner of Customs or District Collector in order to conduct searches, seizures and arrests. In this case, the court said, the prosecution established the lack of said written authority; even Beltran and Golong admitted that they did not have any authorization to search the vans. The court stated:

Verily, it was evident in the above-quoted provisions of Sec. 602 and Sec. 2203 of the Tariff and Customs Code that indeed the Tariff and Customs Code vested upon the Bureau of Customs the authority to enforce the tariff and customs laws, including the prevention and suppression of smuggling and other frauds committed against it.

The PNP-CIDG cannot arrogate upon itself the power which, under the law, is exclusively vested to the Collector of Customs. The PNP-CIDG can only effect search and seizure upon the direction of the Collector of Customs. Hence, it cannot on its own effect search and seizure.[8]

On August 16, 2007, the Sandiganbayan rendered the assailed judgment, the *fallo* of which reads:

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[8] *Id.* at 36.

WHEREFORE, the Court finds accused P/Sr. Supt. Raul Basilio Donida Boac, P/Insp. Ramon Betuin Golong, SPO2 Cesar Fantone Beltran and SPO2 Roger Alcantara Basadre GUILTY, beyond reasonable doubt, for violation of Section 2203 of the Tariff and Customs Code, and, pursuant to Section 3612 thereof, are hereby sentenced each to suffer the penalty of:

(A) imprisonment of one (1) year;

(B) pay the fine of ONE THOUSAND PESOS (₱1,000.00); and

(C) disqualification to hold public office, to vote and participate in any public election for ten years.

SO ORDERED.[9]

On November 14, 2007, the Sandiganbayan denied petitioners' motion for reconsideration. Thus, we have this petition.

Assigned Errors

THE COURT *A QUO* ERRED IN FINDING THE PETITIONERS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 2203 OF THE TARIFF AND CUSTOMS CODE DESPITE THE ABSENCE IN ITS OWN FINDINGS THAT THE PETITIONERS/ ACCUSED CONDUCTED SEARCH, SEIZURE OR ARREST AND DESPITE THE EVIDENCE FROM BOTH PARTIES THAT THE PETITIONERS DID NOT CONDUCT SEARCH, SEIZURE OR ARREST IN THE INSTANT CASE.

THE COURT *A QUO* ERRED IN RULING THAT AUTHORITY OR DELEGATION FROM THE COLLECTOR OF CUSTOMS IS REQUIRED WHEN THE PETITIONERS FLAGGED DOWN THE CONTAINER VANS OUTSIDE THE TERRITORIAL JURISDICTION OF THE COLLECTOR OF CUSTOMS IN THE EXERCISE OF THEIR OFFICIAL DUTIES AS POLICE OFFICERS.

Petitioners assert that they did not conduct any search, seizure, or arrest; hence, there was no violation of the Tariff and Customs Code. During the search conducted in the consignee's warehouse on July 28, 2004, the employees of the owner of the shipment unloaded the goods under BOC personnel supervision. Petitioners

[9] *Supra* note 1, at 36-37.

allege that they only witnessed the search; they did not make any seizures or arrests. After searching the first van and half of the second van without any contraband being found, Customs Police Yamit and Godoy decided to stop the search despite the request of petitioners to continue. Since the Customs Police were already leaving the area, Boac instructed his team to leave the vicinity.[10]

Petitioners further claim that the police's authority to stop, search, and effect seizure and arrest, if necessary, is no longer exclusively vested on the Collector of Customs. Regular PNP members are generally empowered by law to effect arrests in accordance with Republic Act No. (RA) 6975, to wit:

> Section 24. *Powers and Functions.* The PNP shall have the following powers and functions:
> (a) Enforce all laws and ordinances relative to the protection of lives and properties;
> (b) Maintain peace and order and take all necessary steps to ensure public safety;
> (c) Investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution;
> (d) Exercise the general powers to make arrest, search and seizure in accordance with the Constitution and pertinent laws;
>
> x x x x x x x x x
>
> In addition, the PNP shall absorb the office of the National Action Committee on Anti-Hijacking (NACAH) of the Department of National Defense, all the functions of the present Philippine Air Force Security Command (PAFSECOM), as well as the police functions of the Coast Guard. In order to perform its powers and functions efficiently and effectively, the PNP shall be provided with adequate land, sea, and air capabilities and all necessary material means of resources.[11]

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[10] *Rollo*, p. 7.

[11] RA 6975, "An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for Other Purposes," December 13, 1990, as amended by RA 8551 or the "The New Police Act of 1998."

Petitioners, as members of the PNP-CIDG, also have the following functions under RA 6975:

> Section 35. *Support Units*. The PNP shall be supported by administrative and operational support units. The administrative support units shall consist of x x x
>
> x x x x x x x x x
>
> (4) Criminal Investigation Unit. Headed by a Director with the rank of chief superintendent, the Criminal Investigation Unit shall undertake the monitoring, investigation and prosecution of all crimes involving economic sabotage, and other crimes of such magnitude and extent as to indicate their commission by highly placed or professional criminal syndicates and organizations.
>
> This unit shall likewise investigate all major cases involving violations of the Revised Penal Code and operate against organized crime groups, unless the President assigns the case exclusively to the National Bureau of Investigation (NBI).

Petitioners contend that they were investigating a possible connivance of smugglers with some corrupt customs personnel. They maintained that their act of flagging down the container vans was not connected with the enforcement of the tariff and customs laws, smuggling being a form of economic sabotage which is within the powers of the PNP-CIDG to monitor and investigate. Thus, according to them, no prior authority from the Collector of Customs is required in performing their duties as police officers. Besides, they said they immediately coordinated with the Customs Police for the latter to conduct the actual search of the container vans; hence, there was no violation of Sec. 2203.[12]

The Court's Ruling

The petition is meritorious. Petitioners should be acquitted of the charge.

The prosecution has the burden of proving the guilt of the accused beyond reasonable doubt. In this case, it is clear that

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[12] *Rollo*, p. 23.

petitioners neither searched the container vans nor effected seizure and arrest. The testimony of Customs Broker Amolata, the prosecution witness, supports this finding:

> Atty. Llamas:
> Q: Did the PNP-CIDG personnel open the container vans?
> A: No, Sir.
> Q: They did not open the container vans?
> A: Yes, Sir.
> Q You mentioned that you were able to talk with the PNP-CIDG personnel and they agreed to bring the trucks or the container vans to the warehouse of the consignee. Is that correct?
> A: Yes, Sir.
> Q: Were the container vans opened in the evening of July 27, 2004 after the trucks were brought to the place of the consignee, were they opened?
>
> Prosecutor Lubigan:
> Your Honors, what particular time and date is he referring to, Your Honors?
>
> Atty. Llamas:
> In the evening, Your Honors, after the container vans were brought to the warehouse of the consignee on July 27, 2004 whether the container vans were opened in the evening of July 27, 2004, Your Honors.
>
> Witness: No, Sir.[13]

It should be noted that the container vans were brought to the consignee's warehouse and not to the CIDG headquarters. On July 28, 2004, the container vans were searched but not by petitioners, as testified to by petitioners Beltran and Golong, as follows:

> (SPO2 Cesar Beltran)
> Q: Okay, what happened when Yamit and Godoy arrived?
> A: They talked with the owner of the container vans and they opened the container vans.
> Q: Who ordered the opening of the container vans?

[13] TSN, August 8, 2006, pp. 22-23.

A: The persons from the Bureau of Customs and Mr. Bernales, the owner.
Q: What happened, after it was opened?
A: They unloaded the cargoes.
Q: Where were you during that time?
A: We were just there watching the unloading of the contents.[14]

(Police Inspector Ramon Golong)
Q: So, what happened there?
A: One of the container vans was being unloaded when I arrived while we act as observers during the stripping of the contents. The employees of the owner of the shipment were unloading the shipment while the Customs people were supervising them.[15]

The prosecution does not rebut the above testimonies of petitioners. In fact, when questioned by Associate Justice Norberto Y. Geraldez, the prosecution witness, Customs Broker Amolata, attested to the same fact as follows:

Justice Geraldez:
Q: Who brought out the items from the container vans?
A: The employees of the consignee, Your Honors.
Q: The PNP-CIDG personnel or the accused did not search, they were just witnessing the bringing out of the items?
A: They were witnessing also, Your Honors, similar of what were being done by the employees or personnel of the Environment and Security Services of the Bureau of Customs as well as myself, Your Honors.
Q: Did they search the items as if they were looking for something?
A: I cannot remember anymore, Your Honors.[16]

When examined by the prosecutor, Amolata testified:

Q: Did the PNP-CIDG personnel seize any equipment on that shipment? Did they seize any equipment inside the container vans? Did they seize anything, did they take anything, did they get anything inside those three container vans?

[14] TSN, February 1, 2007, p. 19.

[15] TSN, February 8, 2007, p. 17.

[16] TSN, August 8, 2006, pp. 26-27.

A: No, Sir.
Q: So there was no seizure, Mr. Witness? They did not seize anything?
A: Yes, Sir.
Q: Did they make any arrest, did they arrest anybody who were there on the 27th and on the 28th of July 2004?
A: No, Sir.
Q: And the searching was — the opening and the taking out of the equipment were done by the employees of Kakiage Surplus. Am I right, Mr. Witness?
A: Yes, Sir.
Q: It was not done by the PNP-CIDG personnel?
A: Yes, Sir.[17]

The search was actually conducted by Customs Police Yamit and Godoy on July 28, 2004. The Customs Police held the keys of the vans, as attested to by Amolata:

Q: Who has the keys to these container vans, if you know?
A: The keys of the container vans were kept by Captain Capacite of the Enforcement and Security Services of the Bureau of Customs, Sir.
Q: And what is the business of this Captain Capacite, Mr. Witness, who is from the Bureau of customs in holding that keys despite the fact that the container vans were already released by the Bureau of customs Region 10?
A: He requested to have the keys of the container vans to be kept to him because according to him, the following morning he should also be there inside the premises of the consignee to also witness the stripping or taking out of the contents of the container vans, Sir.

x x x x x x x x x

Q: Would you agree with me, Mr. Witness, that Yamit and Godoy has the keys with them on July 28, 2004?
A: I do not know, Sir, whether the keys were being given by Captain Capacite to them.
Q: And Yamit and Godoy were direct subordinates of this Captain Capacite. Would you confirm that?
A: Yes, Sir.

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

Q: And the keys were with Capacite?
A: Yes, Sir.
Q: Is it normal procedure despite the fact that the container vans were already released by the Bureau of Customs, the keys to the container are still held by Captain Capacite?

x x x x x x x x x

A: Not normal procedure, Sir.
Q: Not normal procedure, Mr. Witness?
A: Yes, Sir.[18]

Furthermore, the vans were opened without the presence of the PNP-CIDG's team leader, Inspector Golong. Golong testified:

Q: During the next day, July 28, 2004, could you tell us what happened?
A: The following day when I arrived at Barangay Agusan, the container vans were already opened. The Bureau of Customs people and the owner were already there.[19]

The search was under the direction of the Customs Police because when the Customs Police decided to stop the search, petitioners acceded and left the premises. Boac testified:

Q: What happened next?

A: About after lunch already about 1:30 to 2:00 o'clock in the afternoon he called me again informing me that the customs personnel are already leaving the premises and I asked him what happened. He told me that the customs personnel are leaving and were satisfied that there are no contents on the container vans, however, he told me that the third container van was not stripped off of its contents and I asked Mr. Golong why and I told Inspector Golong to talk to one of the customs personnel to continue stripping the container van.

x x x x x x x x x

I talked to Mr. Yamit since Inspector Golong told me that they are already stripping the contents of the third container

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[18] *Id.* at 26-29.

[19] TSN, February 8, 2007, p. 16.

van and they were already leaving the place, so I instructed Inspector Golong if I could talk to Yamit and ask Yamit if they could continue the stripping of the vans, so he gave me the phone and I talked to Mr. Yamit and told him to continue stripping the third container van up to the last contents. He told me they are already satisfied that there are no contraband items in the container vans but I insisted to just continue stripping the contents of the container van and he told me that they are already being called by their customs collector in Region 10, sir.

Q: After this conversation, what did you do?

A: So, when they are already leaving the place, the customs people, I also ordered Inspector Golong to immediately leave the place because customs personnel are already leaving and they don't have anymore business being there since customs personnel are leaving the place.[20]

The foregoing testimony, which Golong corroborated, was not disputed by the prosecution. It is thus very clear that the search was not done by petitioners but by the Customs Police. Petitioners did not seize anything nor arrested anybody. They merely observed the search which they requested to be undertaken to check for contrabands. Notably, the consignee did not file any complaint against petitioners.

The information charged petitioners for illegally flagging down, searching, and seizing the three container vans on July 27, 2004. Petitioners, however, could not also be held liable for these acts. It is a fact that no search and seizure of the vans was done on the night of July 27, 2004. The act of flagging down the vehicles is not among those proscribed by Sec. 2203 of the Tariff and Customs Code. Mere flagging down of the container vans is not punishable under the said law.

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which

[20] TSN, January 31, 2007, pp. 16-19.

protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[21]

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[22] In this case, the prosecution failed to show that petitioners committed the acts prohibited by Sec. 2203 of the Tariff and Customs Code. There is no such evidence, testimonial or otherwise, that identifies petitioners as responsible for the alleged illegal search. Hence, acquittal is in order.

As regards the second issue, there is no conflict between the aforequoted provisions of the Tariff and Customs Code and RA 6975, as amended. The jurisdiction of the Commissioner of Customs is clearly with regard to customs duties. Should the PNP suspect anything, it should coordinate with the BOC and obtain the written authority from the Collector of Customs in order to conduct searches, seizures, or arrests. Coordination is emphasized in the laws. While it is an admitted fact that there was no such coordination initiated by the PNP-CIDG in this instance, nevertheless, petitioners cannot be convicted under the Tariff and Customs Code since there is no evidence that they did actually search the container vans.

WHEREFORE, the August 16, 2007 Decision and November 14, 2007 Resolution of the Sandiganbayan are *REVERSED* and *SET ASIDE*. Petitioners are *ACQUITTED* of the charge against them. No costs.

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[21] G.R. No 115430, November 23, 1995, 250 SCRA 268, 274-275.

[22] *People v. Velarde*, G.R. No. 139333, July 18, 2002, 384 SCRA 646, 663.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182193. November 7, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FIDEL CANETE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; RAPE IS NOT A RESPECTER OF PEOPLE, TIME OR PLACE. — Accused-appellant's exculpatory allegations do not merit concurrence. Rape has been known to be committed not only in seclusion but in public places, inside an occupied house, or even where there are other people around. We have accordingly ruled that rape is not a respecter of people, time, or place. It is not improbable that accused-appellant was able to succumb to his lechery while AAA's grandmother and sister were sound asleep. Moreover, AAA testified that accused–appellant warned her not to tell anyone of the sexual abuse or else he would kill her. It is not unnatural then for AAA to have kept silent during the rape for fear for her personal safety. The failure of the victim to shout for help does not negate the commission of rape.

2. ID.; ID.; MORAL ASCENDANCY OF ACCUSED-APPELLANT OVER HIS VICTIM AS HER UNCLE WAS MORE THAN SUFFICIENT TO COW HER INTO SUBMISSION EVEN WITHOUT THE USE OF A DEADLY WEAPON. — On the alleged impossibility of inflicting immediate harm on AAA since accused-appellant had no deadly weapon at the time of the rape incidents, we held in *People v. Santos* that it is common

for a young victim of tender age to be fearful in the face of the mildest threat against her life. Although not alleged in the informations, the moral ascendancy of accused-appellant over his victim as her uncle was more than sufficient to cow her into submission, even without use of a deadly weapon.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; MINORITY; MUST BE ALLEGED AND PROVED BEYOND REASONABLE DOUBT AS THE CRIME ITSELF; CASE AT BAR. — Jurisprudence holds that for the special circumstances of minority and relationship to be appreciated between the victim and the accused as her uncle, as here, within the third civil degree, this must be particularly alleged in the Information. Moreover, although minority was sufficiently alleged, the circumstance was not proved or established by the prosecution apart from AAA's testimony on the date she was born. As we have previously held, the circumstances that qualify a crime should be proved beyond reasonable doubt just as the crime itself.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the November 20, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01230 which affirmed the May 26, 2005 Decision of the Regional Trial Court (RTC), Branch 85 in Malolos, Bulacan in Criminal Case Nos. 2557-M-2001 to 2562-M-2001. The RTC found accused-appellant Fidel Canete guilty beyond reasonable doubt of six (6) counts of simple rape.

The Facts

Except for the dates and times of the commission of the offense, the six Informations filed against accused-appellant contain

the same accusatory portion as the first Information (Criminal Case No. 2557-M-2001), as follows:

That in or about the year 1994, in the municipality of BBB,[1] province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of the offended party, AAA, did then and there willfully, unlawfully and feloniously, by means of force and intimidation and with lewd designs, have carnal knowledge of the said AAA, then 9 years old, against her will and without her consent.

Contrary to law.[2]

At his arraignment, accused-appellant pleaded not guilty to all the charges.

During trial, the prosecution presented AAA as its sole witness. The defense likewise presented only one witness, accused-appellant.

The following are the events that transpired according to the prosecution:

Sometime in June 1994, at around one o'clock in the afternoon, AAA, then nine (9) years old, was gathering wood with accused-appellant, her uncle, at a farm some 500 meters away from their house. While they were gathering wood, accused-appellant suddenly grabbed AAA, quickly undressed her, went on top of her, and, despite her protests, succeeded in inserting his penis inside her vagina, making her cry in pain. Accused-appellant then ordered AAA to get dressed as they would be going home. He left AAA at the farm, however.

AAA subsequently went to her neighbor Rose's house. She cried upon seeing Rose. When probed about her tears, she merely said she was scolded by her grandmother as she was warned

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[1] The victim's real name and other personal circumstances are withheld to protect her privacy pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act*) and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] *Rollo*, p. 3.

by accused-appellant not to tell anyone of the rape incident. She left Rose's house after two hours. When she arrived home, she saw accused-appellant and her grandmother, who ordered her to cook. She did not recount her ordeal to her grandmother for fear she might receive a spanking.[3]

Three days later, accused-appellant again raped AAA, this time at their house while her grandmother and sister were asleep. That evening, AAA felt accused-appellant lay down beside her. She became frightened and unsuccessfully tried to rouse her grandmother from sleep. Accused-appellant pinned her down when she tried to stand up. He embraced her and held her legs and stomach. When AAA tried to resist, he punched her arm. He then undressed her, took off his shorts, and inserted his penis inside her vagina. She did not shout as accused-appellant threatened to kill her if she revealed what he was doing to her. Accused-appellant then slept next to AAA. AAA again tried to wake her grandmother up but she was sound asleep. AAA then cried herself to sleep in her frustration.[4]

On September 2, 1995, accused-appellant arrived home after a few months of working elsewhere. AAA celebrated her birthday three days later, and accused-appellant brought her some food.[5] A few days after AAA's birthday, her father and another uncle went back to their places of work while accused-appellant stayed behind.[6] Outside the house, her grandmother was washing clothes and her sister was playing. AAA was listening to the radio on her *papag* when accused-appellant started touching her and offering her money. He forced her to lie next to him and started to embrace and touch her. He removed her shorts and covered her mouth when she started to cry. She tried to remove his hand and get up but he held her hand.[7] He succeeded in inserting

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[3] *Id.* at 5.

[4] *Id.* at 6.

[5] TSN, January 14, 2001, p. 27.

[6] *Id.* at 28.

[7] *Rollo,* pp. 5-6.

his penis into her sexual organ a couple of times. He then told her that if she reported the incident to anyone she would no longer see the light of day (*Huwag daw po akong magkakamaling magsabi sa iba kasi daw po malalaman din niya iyon, hindi na daw po ako sisikatan ng araw*). He then gave her money for *merienda*.[8] After buying food, she placed it on the table and went to the farm to cry. She did not tell her grandmother about what happened as she was afraid she would side with accused-appellant, who is her grandmother's son.

AAA did not see accused-appellant again until January 1996, the period of which AAA remembered clearly as it is the month when the town *fiesta* is celebrated. During this period, accused-appellant was on a one-month vacation from work. One night, her grandmother visited her daughter-in-law who had just given birth. AAA, her sister, and accused-appellant were the only ones home. At around one o'clock in the morning, AAA laid down next to her sister. She then felt accused-appellant lie down beside her. He started to embrace her, making her feel nervous and afraid. He started to kiss her cheeks and pulled her away from her sleeping sister. AAA protested but, still, accused-appellant told her to remove her clothes. When she refused, he removed her clothes and went on top of her. She tried to resist again but eventually he was able to insert his penis into her vagina.[9] When she started to cry, he told her not to worry as he would not neglect her. He then went outside to smoke. AAA put her clothes on and woke up her sister, who noticed she was crying. AAA merely explained that she missed their father. She did not dare divulge the rape as accused-appellant warned her that he would not stop molesting her if she did.[10]

Another rape incident occurred in August 1997. AAA and her sister were in bed by nine o'clock in the evening. While they were asleep, some of their neighbors had a drinking spree with accused-appellant and his brother, Erning. At around 10

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[8] TSN, *supra* note 5, at 31-32.

[9] *Rollo*, p. 6.

[10] *Id.* at 6-7.

o'clock, accused-appellant woke up AAA and asked her to make him some coffee. He then embraced and kissed her and offered her Php 50 but she refused the money. He made her lie down and amid her protests, covered her mouth and removed her shorts as well as his own clothes. He told AAA he loved her very much. He then forced himself on her and molested her. Accused-appellant slapped AAA when she tried to shout. When someone suddenly knocked on the door, he quickly removed his penis from AAA's vagina and ordered her to get dressed. Accused-appellant then went back outside. AAA's uncle Erning returned home that same evening and asked her why she was crying. She told him that she had a stomachache. After the rape incident, AAA ran away from home.[11]

Sometime in November 1998, accused-appellant sexually abused AAA once again. At around 10 o'clock in the evening, he woke her up while she was sleeping next to her sister. He made her lay on a bench and started to embrace her. He then went outside to smoke and returned at around one o'clock in the morning. He again roused AAA from her sleep, caressed her, and told her to be quiet. He removed her pajamas and inserted his penis inside her vagina. He then threatened her again that he would kill her if she reported the rape to anyone. He then left the house after her grandmother died and was laid to rest.[12]

Two more rapes were committed by accused-appellant sometime in 1999. Accused-appellant followed AAA to her home following a house blessing at their neighbor's place. He pulled her and warned her that something would happen to her if she resisted his advances. He then satisfied his urge while AAA was crying.

By June 1999, AAA had moved to a house of a councilor in *Barangay* CCC, BBB, Bulacan. While she was visiting her sister at their old house, accused-appellant went inside the room where she and her sister were sleeping. He laid down next to her and

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[11] *Id.* at 7.

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

undressed her. He inserted his penis into her sexual organ. He told her not to make any noise when she started crying.[13]

The next morning, AAA divulged to her friend, Daisy Manlapit, the sexual abuse to which she had been subjected. Daisy advised her to ask *barangay* officials for help. She told the councilor about her ordeal. Accompanied by her friend, Rose, AAA executed an affidavit at the *barangay* narrating the rape incidents.[14]

As the lone defense witness, accused-appellant denied all the charges hurled at him. His testimony was summarized by the trial court as follows:

> x x x He testified that in 1994, he was living with his employer Councilor Lucas in Sto. Niño, Meycauayan, Bulacan; that he stayed with his employer from 1994 to 1995; that his brother Rollie lives in Meycauayan and was then residing in the house of Captain Javier; that before 1994, he lived in Marilao for six (6) years; that he knew AAA because she was staying in [B]arangay CCC, BBB, Bulacan where he saw her; that the reason why he was detained was because he was implicated by his brother x x x in this case; he does not know why he was implicated by his brother but [the latter] drove away AAA and after that she worked as a maid in Councilor Lucas' house.[15]

On May 26, 2005, the RTC found accused-appellant guilty of all six (6) counts of rape. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, this Court finds accused Fidel Canete GUILTY beyond reasonable doubt of six (6) counts of Simple Rape defined and penalized under Art. 226B of the Revised Penal Code as amended and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* in each of the six (6) Informations filed against him. Accused is also ordered to pay private complainant [AAA], in each case, civil indemnity *ex-delicto* of ₱50,000.00, exemplary damages of ₱25,000.00 and moral damages of ₱50,000.00.
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> SO ORDERED.[16]

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[13] *Id.* at 8.

[14] *Id.* at 9.

[15] CA *rollo*, pp. 22-23.

[16] *Id.* at 70. Penned by Judge Ma. Belen Ringpis Liban.

Accused-appellant appealed the adverse decision. In his appeal before the CA, he claimed that the RTC erred in finding him guilty beyond reasonable doubt as AAA's testimony was doubtful.

On November 20, 2007, the CA affirmed the RTC Decision with a modification on damages awarded. In ruling against accused-appellant, the appellate court found that:

(1) AAA had positively and categorically identified accused-appellant as her rapist. Her testimony on the rape incident was consistent and replete with details;

(2) Even without a deadly weapon, accused-appellant was able to intimidate AAA into submission by his moral ascendancy over her as her uncle;

(3) The allegation that AAA's father is falsely implicating accused-appellant is undeserving of consideration. No father would stoop so low as to subject his daughter to the trauma and embarrassment of a public trial. Moreover, family resentment, revenge, or feud has not swayed the Court from giving full credence to a rape victim's testimony;

(4) Accused-appellant failed to show evidence of his non-culpability of the charges against him. He was unable to prove that it was physically impossible for him to be at the places where the crimes were committed. No one corroborated his alibi to prove his assertion that he was not living in the same house with AAA from 1994 to 1995;

(5) The argument that no rape could have taken place while AAA was sleeping in the same room with her grandmother and sister is not convincing as it has been held that lust is no respecter of time and place;

(6) The prosecution failed to prove the minority of AAA and her relationship with accused-appellant in the informations. Accused-appellant was thus correctly convicted of simple rape; and

(7) The award of exemplary damages must be deleted in view of the absence of the qualifying circumstances of minority and relationship.

The CA disposed of the case as follows:

WHEREFORE, premises considered, the decision dated May 26, 2005 of the Regional Trial Court (RTC), 3rd Judicial Region, Malolos, Bulacan, Branch 85, in Criminal Case Nos. 2557-M-2001 to 2562-M-2001 is AFFIRMED with MODIFICATION by deleting the award of exemplary damages.

SO ORDERED.[17]

On December 10, 2007, accused-appellant filed his Notice of Appeal of the November 20, 2007 Decision of the CA.

Accused-appellant presents a lone issue for this Court's consideration:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE

We find no merit in the appeal.

Accused-appellant advances the theory of the improbability of the rape incidents having occurred based on certain details in the victim's testimony. He wonders how it was possible for the offenses to have transpired when the victim's relatives were in the same room. He likewise avers that the victim should have cried out for help while she was being raped. He argues that there was no proof that he could inflict immediate harm on AAA as he supposedly did not have a deadly weapon during the rape incidents.

Accused-appellant's exculpatory allegations do not merit concurrence. Rape has been known to be committed not only in seclusion but in public places, inside an occupied house, or even where there are other people around.[18] We have accordingly

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[17] *Rollo*, p. 19. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[18] *People v. Olaybar*, G.R. Nos. 150630-31, October 1, 2003, 412 SCRA 490, 501.

ruled that rape is not a respecter of people, time, or place.[19] It is not improbable that accused-appellant was able to succumb to his lechery while AAA's grandmother and sister were sound asleep. Moreover, AAA testified that accused-appellant warned her not to tell anyone of the sexual abuse or else he would kill her. It is not unnatural then for AAA to have kept silent during the rape for fear for her personal safety. The failure of the victim to shout for help does not negate the commission of rape.[20]

On the alleged impossibility of inflicting immediate harm on AAA since accused-appellant had no deadly weapon at the time of the rape incidents, we held in *People v. Santos* that it is common for a young victim of tender age to be fearful in the face of the mildest threat against her life.[21] Although not alleged in the informations, the moral ascendancy of accused-appellant over his victim as her uncle was more than sufficient to cow her into submission, even without use of a deadly weapon.

Given the previous discussion, we find no reason to reverse the findings of the trial and appellate courts which gave full credence to AAA's testimony.

We likewise uphold the award of damages. Jurisprudence holds that for the special circumstances of minority and relationship to be appreciated between the victim and the accused as her uncle, as here, within the third civil degree, this must be particularly alleged in the Information.[22] Moreover, although minority was sufficiently alleged, the circumstance was not proved or established by the prosecution apart from AAA's testimony on the date she was born.[23] As we have previously held, the

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[19] *People v. Cariñaga*, G.R. Nos. 146097-98, August 26, 2003, 409 SCRA 614, 623.

[20] *People v. Madronio*, G.R. Nos. 137587 & 138329, July 29, 2003, 497 SCRA 337, 354.

[21] G.R. No. 145305, June 26, 2003, 405 SCRA 87, 98.

[22] *People v. Malicsi*, G.R. No. 175833, January 29, 2008, 543 SCRA 93, 103; citing *People v. Sabredo*, 387 Phil. 682, 692 (2000).

[23] *Rollo*, p. 18.

circumstances that qualify a crime should be proved beyond reasonable doubt just as the crime itself.[24] Since qualified rape was not sufficiently alleged in the Informations against accused-appellant, the award of Ph₱ 50,000 only as civil indemnity for each count of simple rape is warranted. The award of Ph₱50,000 as moral damages is sustained as it is awarded without need of proof of mental anguish or moral suffering.[25] The deletion of exemplary damages is also correct as it cannot be awarded as part of the civil liability since the crime was not committed with one or more aggravating circumstances.[26]

WHEREFORE, the appeal is *DISMISSED*. The November 20, 2007 Decision of the CA in CA-G.R. CR-H.C. No. 01230 finding accused-appellant guilty of six (6) counts of simple rape is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

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[24] *People v. Espino*, G.R. No. 176742, June 17, 2008.

[25] *People v. Astrologo*, G.R. No. 169873, June 8, 2007, 524 SCRA 477, 491.

[26] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 522-523.

FIRST DIVISION

[G.R. No. 155407. November 11, 2008]

PHILIPPINE NATIONAL OIL COMPANY, *petitioner, vs.* **LEONILO A. MAGLASANG and OSCAR S. MAGLASANG,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; "TAKING", CONSTRUED. — In the context of the State's inherent power of eminent domain, there is "taking" where the owner is actually deprived or dispossessed of his property; where there is a practical destruction or a material impairment of the value of his property; or when he is deprived of the ordinary use thereof. In *Republic v. Castellvi*, this Court held that there is a "taking" when the expropriator enters private property not only for a momentary period but for a more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof. Thus, in that case, we rejected the State's contention that a lease on a year to year basis can give rise to a permanent right to occupy, since by express legal provision a lease made for a determinate time, as was the lease of Castellvi's land, ceases upon the day fixed, without need of a demand. Neither can it be said that the right of eminent domain may be exercised by simply leasing the premises to be expropriated. Where, as here, the owner was compensated and not deprived of the ordinary and beneficial use of his property by its being diverted to public use, there is no taking within the constitutional sense.

2. ID.; ID.; ID.; POWER OF A LOCAL GOVERNMENT TO RECLASSIFY AND CONVERT LANDS THROUGH LOCAL ORDINANCE; CASE AT BAR. — At the outset, we reiterate that the Court recognizes the power of a local government to reclassify and convert lands through local ordinance. The Commissioners' Report discussed in detail the circumstances which led to the reclassification of subject lots from agricultural to industrial land upon declaration of the city of Ormoc and the town of Kananga that the areas around the geothermal plants

are industrial zones. The schedule of values prepared by the municipal assessor which classified the subject lots as industrial property was also appended to the said report submitted to the trial court. Taking its cue from the Commissioners' Report, the trial court took into consideration among others the lots' classification as industrial land in fixing the just compensation. Throughout the entire proceedings in the trial court, no objection was proffered by petitioner on the matter.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL AND NOT TIMELY RAISED IN THE PROCEEDINGS IN THE LOWER COURT ARE BARRED BY ESTOPPEL. — Suffice it to state that issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel. Matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.

4. ID.; ID.; ID.; ONLY QUESTIONS OF LAW MAY BE RAISED IN PETITIONS TO REVIEW DECISIONS OF THE CA FILED BEFORE THE SC, SAVE FOR CERTAIN EXCEPTIONS. — It must be stressed that only question of law may be raised in petitions to review decisions of the CA filed before this Court. The factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances, which we find absent in the instant case: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a 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 CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and

(10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record.

APPEARANCES OF COUNSEL

Medado Sinsuat & Associates for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the January 23, 2002 Decision[1] of the Court of Appeals (CA) in *CA-G.R. CV No. 67341*, as reiterated in its Resolution[2] of September 20, 2002, affirming with modification the *Joint Judgment*[3] dated December 16, 1999 of the Regional Trial Court (RTC) of Ormoc City, Branch 35, in *Civil Case No. 3267-O* and *Civil Case No. 3273-O*.

On October 25, 1994, the Philippine National Oil Company (PNOC) filed a complaint for eminent domain against respondent Oscar S. Maglasang, the registered owner of a 63,333-square meter parcel of land identified as Lot No. 11900 and covered by TCT No. T-4097. The case was docketed at the RTC, Ormoc City, Leyte as *Civil Case No. 3267-O*.

On November 10, 1994, the PNOC filed another expropriation complaint, this time against respondent Leolino A. Maglasang, owner of the 98,206-square meter parcel of land identified as Lot No. 11907, covered by OCT No. P-18869. The case was docketed with the same RTC as *Civil Case No. 3273-O*.

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[1] Penned by Associate Justice Martin S. Villarama, with Associate Justices Conchita A. Carpio Morales (now Supreme Court Associate Justice) and Sergio L. Pestaño (ret.), concurring; *rollo*, pp. 29-37.

[2] *Id.*, p. 39.

[3] *Id.*, pp. 138-144.

The subject parcels of land are located at Lim-ao, Municipality of Kananga, Leyte and to be used by the PNOC in the construction and operation of the 125MW Upper Mahiao Geothermal Power Plant Project.

The RTC issued writs of possession over Lot No. 11907 and Lot No. 11900 on December 5, 1994 and December 13, 1994, respectively, after PNOC posted the required provisional deposit.

On March 21, 1997, upon finality of the orders of condemnation in both expropriation cases, the trial court appointed three commissioners to ascertain and make a recommendation on the just compensation for the condemned lots in accordance with Section 5, Rule 67 of the Rules of Court. Those appointed were: Branch Clerk of Court Atty. Bibiano Reforzado, City Assessor Briccio D. Supremo and businessman Augusto T. Pongos.

Upon conduct of hearing and ocular inspections and reception of the parties' position papers and documentary evidence, Atty. Reforzado submitted a Commissioners' Report dated February 18, 1999, attaching therewith the different valuations recommended by the three commissioners. City Assessor Supremo recommended the price of ₱1,000.00 per square meter,[4] Clerk of Court Reforzado pegged the value of the lots at ₱ 900.00 per square meter.[5] In his report, Mr. Pongos arrived at the lowest valuation of ₱400.00 per square meter for the developed area and ₱ 85.00 for the undeveloped area.[6]

Confronted with the commissioners' varying land valuations, the trial court made its own determination of the just compensation taking into account the range of prices recommended in the Commissioners' Report and documentary evidence presented by the parties. Setting the reckoning period for the computation of the just compensation at the time of the filing of the complaints, the trial court pegged the value of the two lots at ₱ 300.00 per

[4] *Rollo*, p. 128.

[5] *Id.*, pp. 130-137.

[6] *Id.*, p. 129.

square meter. However, in the same decision, the trial court further increased said initial valuation to ₱700.00 per square meter to compensate for what it termed as *inflation factor* and *adjustment factor*. Relying on the case of *Cosculluela v. Court of Appeals*,[7] the trial court ruled:

> After examining the data, the Court would like to take the mean position but similar to the ones taken by the Commissioners. For this, therefore, the Commissioners' Report is hereby accepted. From the reckoning date of 1994, the Court wants to apply a three-year period therefrom to ascertain the prevailing price. The court has in mind the dictum in *Cosculluela vs. Court of Appeals* (164 SCRA 393) which runs as follows: 'just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered just for the property owner is made to suffer the consequence of being immediately deprived of his land.'
>
> The Court thus believes an inflation factor is to be applied in the computation considering the time that elapsed since late 1994 up to the present. Also an adjustment factor commonly adopted by appraisers is included in the computations.
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> Wherefore, after considering all the foregoing, judgment is hereby rendered fixing the amount of ₱700.00 per square meter as just compensation for Lot 11900 under TCT T-4097 in Civil Case No. 3267-0 or the amount of ₱44,333,100 and for Lot 11907 under OCT No. P-18869 in Civil Case No. 3273-0 or the amount of ₱68,744,200 to be paid by the plaintiff to the respective defendants plus cost of the proceedings.
>
> SO ORDERED.

From the foregoing decision, both parties filed their respective appeals with the CA.

On January 23, 2002, the CA rendered the herein challenged decision[8] which modified the decision of the trial court insofar

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[7] G.R. No. 77765, 15 August 1988, 164 SCRA 393, 400.

[8] *Rollo*, pp. 34-35.

as it reduced the just compensation for the subject lots from ₱700.00 to ₱300.00. In arriving at such a decision, the CA ratiocinated, thus:

> We are of the opinion that the trial court reversibly erred in taking into account such 'inflation factor' and 'adjustment factor' for the determination of just compensation in this case. It has misapplied the ruling in *Cosculluela* by substituting such 'inflation factor' and or 'adjustment factor' for the legally mandated interest in the price to be paid as just compensation in expropriation cases.
>
> x x x Nowhere in the said decision may it be inferred that damages for such delay in the payment of just compensation, other than the legal interest provided by law, may be granted in addition or considered in computing the amount of just compensation such as the 'inflation factor' applied by the trial court. On the contrary, our Supreme Court has even ruled that the *de facto* devaluation of the peso is not a factor in land valuation for purposes of expropriation. Therefore, there is absolutely no legal basis for the trial court's application of an 'inflation factor' and 'adjustment factor' in the determination of just compensation in these expropriation cases. The consistent rule has always been that the owner of the property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of the property at the time it is taken. This is the only way that compensation to be paid can be truly just, *i.e.*, just 'not only to the individual whose property is taken, but to the public, which is to pay for it.' Hence, the price level for 1994 when the property was taken by plaintiff-appellant should be the proper valuation for defendant-appellants' properties and not their subsequent increased value after the passage of time.
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> WHEREFORE, premises considered, the present appeals are hereby PARTLY GRANTED. The Joint Judgment appealed from in Civil Case Nos. 3267-O and 3273-O is hereby AFFIRMED with MODIFICATIONS in that the just compensation for the expropriated properties is hereby ordered to be paid to defendant-appellants in the amount of ₱ 300.00 per square meter, or the total amounts of ₱18,999,900.00 to defendant-appellant Oscar S. Maglasang for Lot No. 11900 and ₱ 29,461,800.00 to defendant-appellant Leolino A. Maglasang for Lot No. 11907, with interest at the legal rate of 6%

per annum from October 25, 1994 and November 10, 1994, respectively, until full payment is made.

No pronouncement as to costs.

SO ORDERED.

Still unsatisfied, petitioner filed a motion for reconsideration of the foregoing decision but its motion was denied by the CA in the resolution of September 20, 2002.

Unable to accept the CA's decision for allegedly being contrary to law and established jurisprudence, PNOC is now before the Court with the following grounds in support of its petition:

A. CONTRARY TO THE RULING OF THE HONORABLE COURT OF APPEALS, THE INITIAL VALUATION OF THE TRIAL COURT OF ₱ 300.00 PER SQUARE METER IS NOT WELL SUPPORTED BY THE EVIDENCE ON RECORD AS REPRESENTING THE FAIR MARKET VALUE OF THE EXPROPRIATED PARCELS OF LAND.

B. LIKEWISE CONTRARY TO THE RULING OF THE HONORABLE COURT OF APPEALS, THE SUBJECT PROPERTIES WERE AGRICULTURAL, NOT INDUSTRIAL, PARCELS OF LAND AT THE TIME THEY WERE TAKEN FOR PUBLIC USE.

As we see it, other than the question as to the precise time the fixing of just compensation should be reckoned, the rest of petitioner's arguments dwell solely on questions of fact.

In expropriation proceedings, the value of the land and its character at the time it was taken by the government are the criteria for determining just compensation.[9] This is so because, there are instances when the expropriating agency takes over the property prior to the expropriation suit, in which situation just compensation shall be determined as of the time of taking.[10]

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[9] *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals*, G.R. No 109338, November 20, 2000, 345 SCRA 85, 95.

[10] *Ansaldo v. Tantuico*, G.R. No. 50147, August 2, 1990, 188 SCRA 300, 303-304.

The reason for the rule, as pointed out in *Republic v. Lara*,[11] is that —

> (W)here property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enchanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way that compensation to be paid can be truly just; *i.e.*, 'just not only to the individual whose property is taken,' 'but to the public, which is to pay for it.

Here, petitioner insists that contrary to the findings of the two courts below, the determination of just compensation should be reckoned prior to the time of the filing of the complaint for expropriation. According to petitioner in *Civil Case No. 3267-O*, petitioner took possession of the land on January 1, 1992 when PNOC leased the same from its administrator as evidenced by a Lease Agreement[12] for the period of January 1, 1992 to December 31, 1992. Thus, taking, for purposes of computing just compensation, should have been reckoned from January 1, 1992.

We are not persuaded.

In the context of the State's inherent power of eminent domain, there is "taking" where the owner is actually deprived or dispossessed of his property; where there is a practical destruction or a material impairment of the value of his property; or when he is deprived of the ordinary use thereof.[13]

In *Republic v. Castellvi*,[14] this Court held that there is a "taking" when the expropriator enters private property not only

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[11] 96 Phil. 170, 177 (1954).

[12] *Rollo*, pp. 154-156.

[13] *Municipality of La Carlota v. NAWASA*, G.R. No. L-20232, September 30, 1964, 12 SCRA 164, 167.

[14] G.R. No. L-20620, August 15, 1974, 58 SCRA 336, 352.

for a momentary period but for a more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof. Thus, in that case, we rejected the State's contention that a lease on a year to year basis can give rise to a permanent right to occupy, since by express legal provision a lease made for a determinate time, as was the lease of Castellvi's land, ceases upon the day fixed, without need of a demand. Neither can it be said that the right of eminent domain may be exercised by simply leasing the premises to be expropriated. Where, as here, the owner was compensated and not deprived of the ordinary and beneficial use of his property by its being diverted to public use, there is no taking within the constitutional sense.

In fixing the just compensation reckoned from 1994, the trial court took the Commissioners' Report into consideration:

II. Time of the Taking.

In both cases the time of the taking may be reckoned in 1994. For Lot 11900, on October 24, 1994, the date of the filing of the complaint although the plaintiff took possession of the property in 1991 due to a lease contract executed between plaintiff and defendant yet the intention to expropriate was manifested only upon the filing of the complaint (*NPC vs. CA and Macapanton Magondata*, 254 SCRA 577).

For Lot 11907, the time of the taking shall be reckoned on November 10, 1994 where the institution of the case precedes entry of the property, the just compensation is to be ascertained as of the filing of the complaint.[15]

Accordingly, we quote with approval the trial court's ruling on this point:

Contrary to plaintiff's position, the lease in 1992 should not be construed as taking in the constitutional sense. What constitutes 'taking' is when the property is 'directly appropriated' and not to 'consequential injuries resulting from the exercise of lawful power'

[15] *Rollo*, p.133.

(Tañada and Carreon, Political Law of the Philippines, Vol. Two, 1962 First Edition, Manila Central Book Supply, Inc. 1, p. 90, p. 92)

Following the doctrine in *Castellvi*, the trial court committed no error when it reckoned the time of taking of the subject properties from the date of filing of petitioner's complaints for eminent domain.

Petitioner would next argue that the subject lots were erroneously classified as industrial land when in fact they were agricultural land at the time they were taken for expropriation.

At the outset, we reiterate that the Court recognizes the power of a local government to reclassify and convert lands through local ordinance.[16]

On this score, we quote the findings of the commissioners as contained in their report on the ocular inspection conducted on October 29, 1997, and summarized by the CA, to wit:

> x x x (1) Lot 11907 was only recently flattened, there are no more trees, no more plants except cogon grass and other wild plants; Lot 11900 has also been flattened in the middle of which are two reinjection pumps, and also found therein are some fruit bearing coconut trees; (2) adjacent lots are partly forested areas; (3) the trees in both lots had been felled, including fruit bearing coconut trees, but the number of those felled are unknown, there being no records available; what remains are cogon grass and other wild plants and the traces of rivulets created by torrential rains. The terrain is rolling and mountainous although these areas have long been developed and used by the PNOC before the filing of the cases, which though not traversed directly by the provincial or national roads, are already accessible by all-weather roads and are adjacent to different PNOC buildings.

The Commissioners' Report discussed in detail the circumstances which led to the reclassification of subject lots from agricultural to industrial land upon declaration of the city

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[16] *Juan B. Amante, et al. v. Luis Yulo, Jesus Miguel Yulo, C-J Yulo & Sons, Inc., Sta. Rosa Realty Development Corporation, et al.*, G.R. No. 118838, March 16, 2005, 453 SCRA 432, 459, citing Section 20, Republic Act No. 7160 (Local Government Code) and Memorandum Circular 54, series of 1993, Office of the President.

of Ormoc and the town of Kananga that the areas around the geothermal plants are industrial zones. The schedule of values prepared by the municipal assessor which classified the subject lots as industrial property was also appended to the said report submitted to the trial court.

Taking its cue from the Commissioners' Report, the trial court took into consideration among others the lots' classification as industrial land in fixing the just compensation. Throughout the entire proceedings in the trial court, no objection was proffered by petitioner on this matter.

As it were, the Court cannot but agree with the CA when it ruled that petitioner's belated objection on appeal of the classification of the subject lots could no longer be entertained. For the same reason the Court refuses to consider petitioner's Manifestation[17] stating that a property adjacent to the subject lots was purchased at ₱ 80.00 per square meter and urging the Court to peg the value of the subject properties at the same amount. Suffice it to state that issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel. Matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[18]

Finally, on the basis of all its arguments, petitioner asks this Court to set aside the lower courts' factual finding as to the just compensation for the subject expropriated lots.

It must be stressed that only questions of law may be raised in petitions to review decisions of the CA filed before this Court. The factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances, which we find absent

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[17] *Rollo,* pp. 176-179.

[18] *Sps. Luis V. Cruz and Aida Cruz v. Sps. Alejandro Fernando, Sr., and Rita Fernando,* G.R. No. 145470, December 9, 2005, 477 SCRA 173, 182-183.

in the instant case: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a 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 CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record.[19]

Clearly, petitioner has failed to establish that the present case falls under any of the exceptions enumerated above. A perusal of the facts and evidence presented does not convince this Court to deviate from the findings of fact of the two courts below. The lower courts properly appreciated the evidence submitted by both parties as regards the nature of the expropriated lots. These courts have determined that the lots were industrial at the time of the taking by petitioner for expropriation.

To recapitulate, in denying the instant petition, the Court relies on a well-established doctrine. Thus, in the present case, the findings of fact of the CA, affirming those of the trial court, cannot be disturbed, modified or reversed by this Court in a petition for review under Rule 45 of the Rules of Court.

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

SO ORDERED.

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

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[19] *Republic of the Philippines and Cavite College of Fisheries v. Maxima Lensico, Rufina Lensico, Rogelio Lensico and Victor Lensico*, G.R. No. 158919, August 9, 2005, 466 SCRA 361, 369.

FIRST DIVISION

[G.R. No. 160127. November 11, 2008]

RAFAEL P. LUNARIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FINDINGS OF FACT OF CA ARE CONCLUSIVE ON THE COURT, MORE SO WHEN IT CONCURS WITH THE FACTUAL FINDINGS OF THE RTC. — It is beyond cavil that in an appeal by *certiorari,* the jurisdiction of this Court is confined to reviews of errors of law ascribed to the CA. This Court is not a trier of facts, and the findings of fact by the CA are conclusive, more so when it concurs with the factual findings of the RTC. Absent any showing that such findings are devoid of any substantiation on record, the finding of guilt is conclusive on us.

2. CRIMINAL LAW; SPECIAL LAWS; B.P. Blg. 22; VIOLATION OF; ELEMENTS OF THE CRIME. — The elements of the crime have been established by the prosecution, *i.e.*, (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not drawer, without any valid cause, ordered the bank to stop payment.

3. ID.; ID.; ID.; ID.; LACK OF CRIMINAL INTENT ON THE PART OF THE ACCUSED IS IRRELEVANT. — It bears repeating that the lack of criminal intent on the part of the accused is irrelevant. The law has made the mere act of issuing a worthless check a *malum prohibitum*, an act proscribed by legislature for being deemed pernicious and inimical to public welfare. In fact, even in cases where there had been payment, through compensation or some other means, there could still be prosecution for violation of B.P. 22. The gravamen of the offense under this law is the act of issuing a worthless check

or a check that is dishonored upon its presentment for payment, not the nonpayment of the obligation.

4. ID.; ID.; ID.; ID.; PENALTY; SC ADMINISTRATIVE CIRCULAR NO. 12-2000, CITED. — Since 1998, this Court has held that it would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. 22, the same philosophy underlying the Indeterminate Sentence Law be observed, *i.e.*, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. This policy was embodied in Supreme Court Administrative Circular No. 12-2000, authorizing the non-imposition of the penalty of imprisonment in B.P. 22 cases. We also clarified in Administrative Circular. 13-2001, as explained in ***Tan v. Mendez***, that we are not decriminalizing B.P. 22 violations, nor have we removed imprisonment as an alternative penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the judge. Should the judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance.

APPEARANCES OF COUNSEL

Benjamin C. Santos & Ray Montri C. Santos Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PUNO, *C.J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, to reverse and set aside the Decision of the Court of Appeals (CA),[1] and the Resolution which denied petitioner's motion for reconsideration. The CA affirmed the

[1] In CA-G.R. CR No. 20343 promulgated on April 10, 2003, decided by the Seventeenth Division, with *J.* Pestaño as *ponente*, and *JJ.* Abesamis and Tijam, concurring.

decision of the Regional Trial Court (RTC) of Valenzuela City, Branch 75,[2] finding petitioner Rafael Lunaria guilty of one (1) count violation of *Batas Pambansa* (B.P.) *Blg*. 22.

The Case

Records[3] show that sometime in October 1988, petitioner entered into a partnership agreement with private complainant Nemesio Artaiz, in the conduct of a money-lending business, with the former as industrial partner and the latter the financer. Petitioner, who was then a cashier of Far East Bank and Trust Company in Meycauayan, Bulacan, would offer loans to prospective borrowers which his branch was unable to accommodate. At the start of the business, petitioner would first inform Artaiz of the amount of the proposed loan, then the latter would issue a check charged against his account in the bank (proceeds of which will go to a borrower), while petitioner would in turn issue a check to Artaiz corresponding to the amount lent plus the agreed share of interest.

The lending business progressed satisfactorily between the parties and sufficient trust was established between the parties that they both agreed to issue pre-signed checks to each other, for their mutual convenience. The checks were signed but had no payee's name, date or amount, and each was given the authority to fill these blanks based on each other's advice.

The arrangement ended on November 1989, when Artaiz was no longer willing to continue the partnership.[4] One of the checks issued by petitioner to Artaiz was dishonored for insufficient funds.[5] When Artaiz went to petitioner to ask why the latter's check had bounced, petitioner told Artaiz that he had been implicated in a murder case and therefore could not

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[2] The information dated December 11, 1991 was filed on January 24, 1992 and docketed as Criminal Case No. 908-V-92.

[3] Records, pp. 82-83. See TSN, August 25, 1993, p. 8; and June 7, 1993, pp. 9-13.

[4] TSN, August 25, 1993 pp. 28-29.

[5] *Id.*

raise the money to fund the check.[6] Petitioner requested Artaiz not to deposit the other checks that would become due as he still had a case.[7]

Petitioner was charged with murder in December 1989 and detained until May 1990, when he was released on bail. He was eventually acquitted in December 1990. According to Artaiz, he went to petitioner in May 1990, after petitioner had been released on bail, and demanded payment for the money owed Artaiz. Petitioner again requested more time to prepare the money and collect on the loans. Artaiz agreed.[8] In June 1990, petitioner allegedly went to Artaiz's residence where both had an accounting. It was supposedly agreed that petitioner owed Artaiz ₱844,000.00 and petitioner issued a check in that amount, post-dated to December 1990.[9]

When the check became due and demandable, Artaiz deposited it. The check was dishonored as the account had been closed. A demand letter was subsequently sent to petitioner, informing him of the dishonor of his check, with a demand that he pay the obligation.[10] Artaiz also went to petitioner's house to get a settlement. According to Artaiz, petitioner proposed that his house and lot be given as security. But after Artaiz's lawyer had prepared the document, petitioner refused to sign. At this point, Artaiz filed the instant case. [11]

The RTC found petitioner guilty as charged and sentenced him to suffer the penalty of imprisonment of one (1) year, and to pay Artaiz the amount of ₱844,000.00, and the cost of suit.[12]

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] TSN, August 25, 1993, pp. 32-35. See Records, p. 95.

[10] *Id.*, at pp. 35-38.

[11] *Id.*, at pp. 39-40.

[12] See records, pp. 96-100.

On appeal, the CA found no error and affirmed the decision in *toto*.[13]

The Issues

In the petition before us, petitioner alleges that the CA gravely erred in:

I. Not reversing the RTC decision convicting petitioner for violation of *B.P. Bilang 22*;

II. Not holding that the prosecution failed to establish the elements of the crime of the violation of *B.P. Bilang 22*:

1. the prosecution failed to establish that the subject check was duly "made" or "drawn" and "issued" by petitioner;
2. the subject check was received by the private complainant without giving any consideration therefore;
3. the oral testimony of private complainant is full of serious inconsistencies and contradictions and should have been disregarded by the trial court;
4. private complainant's testimony should have been stricken off the records for being hearsay in nature;
5. the prosecution dismally failed to overcome the presumption of innocence of the accused in criminal cases;
6. to hold petitioner liable for violation of B.P. Blg. 22 in this case would result in a terrible injustice;

III. In the alternative, . . . in not applying in petitioner's favor the rule of preference in the imposition of penalties in B.P. Blg. 22 cases, *i.e.*, the [CA] erred gravely in not deleting the penalty of imprisonment and imposing in lieu thereof a fine upon petitioner.

The Ruling

We affirm the conviction but with modification on the penalty.

At the outset, the first and second grounds raised by petitioner are essentially factual in nature, impugning the finding of guilt by both the CA and the RTC. Petitioner would have this court re-evaluate and re-assess the facts, when it is beyond cavil that in an appeal by *certiorari*, the jurisdiction of this Court is confined

[13] *Id.*, at pp. 81-90 and 92-93.

to reviews of errors of law ascribed to the CA. This Court is not a trier of facts, and the findings of fact by the CA are conclusive, more so when it concurs with the factual findings of the RTC. Absent any showing that such findings are devoid of any substantiation on record, the finding of guilt is conclusive on us.[14]

Moreover, we have gone over the records and find no error in the decision of the appellate court holding that the elements of the crime have been established by the prosecution, *i.e.*, (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[15]

Petitioner makes much of the argument that the check was not "made" or "drawn" within the contemplation of the law, nor was it for a consideration. The evidence on record belies these assertions. As correctly held by the CA:

> Under the first element, [petitioner] wants Us to believe that he did not draw and issue the check. Citing the Negotiable Instruments Law, he said the he could not have "drawn" and "issued" the subject check because "it was not complete in form at the time it was given to [Artaiz]."
>
> At the outset, it should be borne in mind that the exchange of the pre-signed checks without date and amount between the parties had been their practice for almost a year by virtue of their money-lending business. They had authority to fill up blanks upon information that a check can then be issued.

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[14] *Tan v. Mendez,* 432 Phil. 760 (2002); *Luis Wong v. CA*, G.R. No. 117857, February 2, 2001, 351 SCRA 100; and *Aleria Jr. v. Velez,* G.R. No. 127400, November 16, 1998, 298 SCRA 611, 618.

[15] *Ting v. CA*, 398 Phil. 481 (2000); *Sycip, Jr. v. CA*, G.R. No. 125059, March 17, 2000, 328 SCRA 447. See Batas Pambansa Bilang 22 (1979), Section 1.

Thus, under the Negotiable Instruments Law, Section 14 of which reads:

"*Blanks, when may be filled.* — Where the instrument is wanting in any material particular, the person in possession thereof has *prima facie* authority to complete it by filling up the blanks therein. x x x"

[T]his practice is allowed.

Because of the presumption of authority, the burden of proof that there was no authority or that authority granted was exceeded is carried by the person who questions such authority.

Records show that [petitioner] had not proven lack of authority on the part of Artaiz to fill up such blanks. Having failed to prove lack of authority, it can be presumed that Artaiz was within his rights to fill up blanks on the check.

x x x x x x x x x

Under the second element, [petitioner] states that the making and issuing of the check was devoid of consideration. He claimed that the transaction for which the check was issued did not materialize. However, it should be noted that when lack of consideration is claimed, it pertains to total lack of consideration. In this case, records show that [petitioner] recognized that there was an amount due to Artaiz, such that he had his own version of computation with respect to the amount he owed to Artaiz.[16]

We also note that with respect to the second element of the crime, consideration was duly established in Artaiz's testimony.[17]

It bears repeating that the lack of criminal intent on the part of the accused is irrelevant.[18] The law has made the mere act of issuing a worthless check a *malum prohibitum*, an act proscribed by legislature for being deemed pernicious and inimical

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[16] Records, pp. 85-86. (Citations omitted)

[17] See TSN, August 25, 1993, pp. 9-18.

[18] *People v. Lo Ho Wing*, G.R. No. 88017, 21 January 1991, 193 SCRA 122, 130. See *Macalalag v. People*, G.R. No. 164358, December 20, 2006, 511 SCRA 400; *Tan v. Mendez,* 432 Phil. 760 (2002); *People v. Laggui*, G.R. Nos. 76262-63, March 16, 1989, 171 SCRA 305, 311; *People v. Manzanilla*, G.R. Nos. 66003-04, 11 December 1987, 156 SCRA 279, 283.

to public welfare.[19] In fact, even in cases where there had been payment, through compensation or some other means, there could still be prosecution for violation of B.P. 22. The gravamen of the offense under this law is the act of issuing a worthless check or a check that is dishonored upon its presentment for payment, not the nonpayment of the obligation.[20]

We now come to the penalty imposed. On this ground, we rule for petitioner.

Since 1998,[21] this Court has held that it would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. 22, the same philosophy underlying the Indeterminate Sentence Law be observed, *i.e.*, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order.[22] This policy was embodied in Supreme Court Administrative Circular No. 12-2000,[23] authorizing the non-imposition of the penalty of imprisonment in B.P. 22 cases. We also clarified in Administrative Circular No. 13-2001, as explained in ***Tan v. Mendez***,[24] that we are not decriminalizing B.P. 22 violations, nor have we removed imprisonment as an alternative penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the judge. Should the judge

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[19] *Macalalag v. People*, G.R. No. 164358, December 20, 2006, 511 SCRA 400; *Tan v. Mendez,* 432 Phil. 760 (2002); *People v. Laggui*, G.R. Nos. 76262-63, March 16, 1989, 171 SCRA 305, 311; *People v. Manzanilla*, G.R. Nos. 66003-04, December 11, 1987, 156 SCRA 279, 283.

[20] *Macalalag v. People*, G.R. No. 164358; December 20, 2006, 511 SCRA 400; *Tan v. Mendez,* 432 Phil. 760 (2002); *Lozano v. Martinez*, G.R. No. 63419, December 18, 1986, 146 SCRA 323, 338.

[21] *Vaca v. CA*, G.R. No. 131714, November 16, 1998, 298 SCRA 656, 664. See *Lim v. People*, G.R. No. 130038, September 18, 2000, 340 SCRA 497, 504.

[22] Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001.

[23] G.R. No. 138669, June 6, 2002.

[24] 432 Phil. 760 (2002).

decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance.

Nevertheless, we note that ultimately, this case was a derivative of the breakdown of petitioner and Artaiz's partnership, which was precipitated by petitioner being implicated and detained for a murder charge, from which he was subsequently acquitted. Under the circumstances of the case, and bearing in mind the guidelines set in Administrative Circular No. 13-2004, we deem the imposition of a fine alone would best serve the interests of justice, pegged at the maximum amount provided for by law, which is two hundred thousand pesos (₱200,000.00),[25] with the proviso that subsidiary imprisonment will be meted out which shall not exceed six months in case of insolvency or nonpayment. Petitioner should also pay Artaiz the amount of ₱844,000.00, and the cost of suit.

IN VIEW WHEREOF, the petition is *DENIED* and the Decision of the Court of Appeals in CA-G.R. CR No. 20343 is *AFFIRMED* with *MODIFICATION*. Petitioner is ordered to indemnify Nemesio Artaiz in the amount of ₱844,000.00 and the cost of suit, with legal interest from date of judicial demand. The sentence of imprisonment of one (1) year is *SET ASIDE* and, *in lieu* thereof, a *FINE* in the amount of ₱200,000.00 is imposed upon petitioner, with subsidiary imprisonment not to exceed six months in case of insolvency or nonpayment.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

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[25] Pursuant to Section 1 of B.P. 22.

EN BANC

[G.R. No. 163443. November 11, 2008]

LIZA M. QUIROG and RENE L. RELAMPAGOS, *petitioners, vs.* **GOVERNOR ERICO B. AUMENTADO,** *respondent.*

[G.R. No. 163568. November 11, 2008]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **COURT OF APPEALS and GOV. ERICO B. AUMENTADO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE COMMISSION; CSC DISAPPROVAL OF AN APPOINTMENT; BOTH THE APPOINTING AUTHORITY AND APPOINTEE ARE EQUALLY REAL PARTIES IN INTEREST WHO HAVE REQUISITE LEGAL STANDING TO BRING AN ACTION CHALLENGING SUCH DISAPPROVAL. — In the recent case of *Abella, Jr. v. Civil Service Commission,* the Court declared that both the appointing authority and the appointee are equally real parties in interest who have the requisite legal standing to bring an action challenging a CSC disapproval of an appointment. In said case, we held that: The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval. Thus, Section 2 of Rule V1 of CSC Memorandum Circular 40, s. 1998 is justified insofar as it allows the appointing authority to request reconsideration or appeal. x x x Although the earlier discussion demonstrates that the appointing authority is adversely affected by the CSC's Order and is a real party in interest, the appointee is rightly a real party in interest too. He is also injured by the CSC disapproval, because he is prevented from assuming the office in a permanent capacity. Moreover, he would necessarily benefit if a favorable judgment is obtained, as an approved appointment would confer on him all the rights and privileges of a permanent appointee. x x x Section 2 of Rule V1 of CSC Memorandum

Circular 40, s. 1998 should not be interpreted to restrict solely to the appointing authority the right to move for a reconsideration of, or to appeal, the disapproval of an appointment. PD 807 and EO 292, from which the CSC derives the authority to promulgate its rules and regulations, are silent on whether appointees have a similar right to file motions for reconsideration of, or appeals from, unfavorable decisions involving appointments. Indeed, there is no legislative intent to bar appointees from challenging the CSC's disapproval. The view that only the appointing authority may request reconsideration or appeal is too narrow . The appointee should have the same right. Parenthetically, CSC Resolution 99-1936 recognizes the right of the adversely affected party to appeal to the CSC Regional Offices prior to elevating a matter to the CSC Central Office. The adversely affected party necessarily includes the appointee.

2. CIVIL LAW; CIVIL CODE; LAWS; PROSPECTIVE APPLICATION OF LAWS; CASE AT BAR. — Records disclose that on May 28, 2001, the PSB of the Human Resource Management and Development Office of Bohol, issued a certification that Quirog was one of two candidates qualified for the position of PGDH-OPA. On the same day, Quirog was appointed by then Governor Relampagos and on June 1, 2001, she took her oath of office. CSC Resolution No. 010988 was issued three days later, or on June 4, 2001. Evidently, the CSCROVII should not have subjected Quirog's appointment to the requirements under said resolution, as its application is against the prospective application of laws. Having no provision regarding its retroactive application to appointments made prior to its effectivity, CSC Resolution No. 010988 must be taken to be of prospective application. As we have held time and again: Since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. Prescinding therefrom, it cannot be said that Quirog's appointment violated CSC Resolution No. 010988, the said Resolution having taken effect after the questioned appointment was extended.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; MIDNIGHT APPOINTMENTS. — The constitutional prohibition on so-called *midnight appointments*, specifically, those made within two (2) months immediately prior to the next presidential elections, applies only to the President or Acting President. As the Court ruled in *De Rama v. CA:* The records reveal that when the petitioner brought the matter of recalling the appointments of the fourteen (14) private respondents before the CSC, the only reason he cited to justify his action was that these were *midnight appointments* that are forbidden under Article VII, Section 15 of the Constitution. However, the CSC ruled, and correctly so, that the said prohibition applies only to presidential appointments. In truth and in fact, there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure. We, however, hasten to add that the aforementioned ruling does not mean that the *raison d' etre* behind the prohibition against midnight appointments may not be applied to those made by chief executives of local government units, as here. Indeed, the prohibition is precisely designed to discourage, nay, even preclude, losing candidates from issuing appointments merely for partisan purposes thereby depriving the incoming administration of the opportunity to make the corresponding appointments in line with its new policies.

APPEARANCES OF COUNSEL

Rene Paredes for petitioners in G.R. No. 163443.
The Solicitor General for CSC.
Provincial Legal Office of Bohol for Gov. E.B. Aumentado.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court are two consolidated petitions for review under Rule 45 of the Rules of Court both assailing and seeking to set aside the Court of Appeals' (CA) **Decision**[1] **dated March**

[1] Penned by then Associate Justice Elvi John S. Asuncion with then Presiding Justice Ruben T. Reyes (now a member of this Court) and Associate Justice Lucas P. Bersamin, concurring; G.R. No. 163443, *rollo*, pp. 169-174.

31, 2003 and the **Resolution**[2] **dated April 12, 2004** in *CA-G.R. SP No. 70255*. The Decision set aside Resolution Nos. 011812 and 020271 dated November 20, 2001 and February 22, 2002, respectively, of the Civil Service Commission in Administrative NDC No. 01-88 and reinstated the (a) June 28, 2001 Order and (b) July 23, 2001 Decision of the Civil Service Commission Regional Office No. VII.

The facts as culled from the records are as follows:

On May 28, 2001, Bohol Provincial Governor Rene L. Relampagos permanently appointed[3] Liza M. Quirog as Provincial Government Department Head[4] of the Office of the Bohol Provincial Agriculture (PGDH-OPA). The appointment was confirmed by the Sangguniang Panlalawigan in Resolution No. 2001-199[5] on June 1, 2001. On even date, Quirog took her oath of office.

Before the issuance of the permanent appointment, the Personnel Selection Board (PSB) of the Human Resource Management and Development Office of Bohol issued a certification[6] that Quirog was one of two candidates qualified for the position of PGDH-OPA.

A copy of the Monthly Report on Personnel Actions (ROPA) covering the months of May and June 2001 of the provincial government was submitted to the Civil Service Commission Regional Office No. VII (CSCROVII), Cebu City.

In the Order dated June 28, 2001,[7] the Director of CSCROVII invalidated Quirog's appointment as PGDH-OPA upon finding that the same was part of the bulk appointments issued by then Governor Relampagos after the May 14, 2001 elections allegedly

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[2] *Id.* at 191.

[3] *Id.* at 41.

[4] Also called Provincial Agriculturist.

[5] G.R. No. 163443; *rollo*, pp. 42-43.

[6] *Id.* at 49.

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

in violation of Item No. 3(d)[8] of CSC Resolution No. 010988 dated June 4, 2001. The Order pointed out that the prohibition against the issuance of *midnight appointments* was already laid down as early as February 29, 2000 in CSC Resolution No. 000550.[9]

Both Relampagos and Quirog moved for reconsideration of the CSCROVII Order, alleging that when the latter took her oath of office on June 1, 2001, CSC Resolution No. 010988 was not yet effective as it took effect only on June 4, 2001. They argued that the subject appointment cannot be considered a *midnight appointment* because it was made days before the expiration of Relampagos' term, and that Quirog was already the acting Provincial Agriculturist a year prior to said appointment or since June 19, 2000.[10] Besides, so they asserted, since Quirog had already taken her oath of office, assumed her duties and collected her salary for the month of June, 2001, she had already acquired a legal, not merely equitable, right to the position in question, which cannot be taken away from her either by revocation of the appointment or by removal except for cause and with previous notice and hearing.

In a decision[11] dated July 23, 2001, the CSCROVII denied Quirog's and Relampagos' motion for reconsideration for lack of legal personality to file such pleading, citing Section 2, Rule VI of CSC Memorandum Circular (MC) No. 40, series of 1998.

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[8] Pertinently, Item 3(d) reads:

3. All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, x x x which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, x x x shall be disapproved unless the following requisites concur relative to their issuance:

x x x x x x x x x

d) That the appointment is not one of those mass appointments issued after the elections.

[9] Entitled *Castro, Ariel, et al., Re: Appeal, Termination of Services, Midnight Appointments.*

[10] G.R. No. 163443; *rollo,* p. 37.

[11] *Id.* at 54-55.

The CSCROVII explained that only the appointing officer may request reconsideration of the disapproval of an appointment by the Civil Service Commission. Even if Relampagos was the one who appointed Quirog, he could not file a motion for reconsideration because his term as governor had already expired.

Aggrieved, the petitioners in G.R. No. 163443 appealed to the Civil Service Commission (CSC) where their joint appeal was docketed as Adm. NDC No. 01-88.

On November 20, 2001, the CSC issued Resolution No. 011812,[12] which granted the said joint appeal and set aside the order and decision of the CSCROVII. More specifically, the Resolution states:

> WHEREFORE, the joint appeal of former Governor Rene L. Relampagos and Liza M. Quirog is hereby GRANTED. Accordingly, the decision dated July 23, 2001 of the Civil Service Commission-Regional Office No. VII and CSCRO No. VII Order dated June 28, 2001 are hereby set aside. Said Regional Office is enjoined to approve the appointment of Quirog to the position of Provincial Government Head, Office of the Provincial Agriculturist, Province of Bohol.

According to the CSC, since Relampagos had ceased to be the appointing authority upon the expiration of his term as governor and incumbent Governor Erico B. Aumentado was not the official who made the subject appointment, equity dictates that the appointee Quirog be allowed to question the decision to obviate possible damage or injury to the delivery of public service. The CSC also declared that the appointment of Quirog was not a midnight appointment as it was not hurriedly issued nor did it subvert the policies of the incoming administration. The CSC relaxed the application of Item 3(a)[13] in CSC Resolution 01-0988

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[12] *Id.* at 69-76.

[13] Pertinently, Item 3(a) reads:

> 3. All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, x x x which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, x x x shall be disapproved unless the following requisites concur relative to their issuance:

requiring that appointments should have gone through the regular screening by the PSB before the election ban or the prohibited period from March 30, 2001 to May 14, 2001. After noting that the selection board only deliberated upon Quirog's qualifications on May 24, 2001, or after the election ban, the CSC ratiocinated that the spirit, rather than the letter of the said rule should prevail as long as the case did not involve a midnight appointment proscribed by *Aytona v. Castillo, et al.*[14] Lastly, the CSC justified Quirog's appointment even though such was included among 46 post-election appointments because of the need to immediately fill up in a permanent capacity the vacant position of Provincial Agriculturist and the fact that Governor Aumentado expressly declared his trust and confidence in Quirog in his Memorandum No. 1[15] dated July 2, 2001.

On December 10, 2001, incumbent Bohol Governor Erico B. Aumentado filed an amended Motion for Reconsideration[16] of the CSC Resolution No. 011812. He insisted that Quirog and Relampagos had no legal personality to file a motion for reconsideration of the disapproved appointment or to appeal the same. He insisted that Quirog's appointment was a midnight appointment. Aumentado added that the selection board which screened Quirog's qualifications was not validly constituted and that the subject appointment was made more than six months from the time it was published on July 23, 2000 in violation of CSC Resolution No. 010114[17] dated January 10, 2001. Aumentado insisted that Relampagos made 97, not 46, mass appointments on the eve of his term, 95 of which were invalidated

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a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report, or minutes of its meeting.

[14] No. L-19313, January 19, 1962, 4 SCRA 1.

[15] *Rollo*, p. 193.

[16] G.R. No. 163443; *id.* at 78-89.

[17] CSC Resolution No. 010114 dated January 10, 2001 pertinently reads:
The publication of a particular vacant position shall be valid until filled up but not to extend beyond six months reckoned from the date the vacant position was published.

by the CSC Bohol Field Office and two, including that of Quirog, by the CSCROVII.

In Resolution No. 020271[18] dated February 22, 2002, the CSC denied Aumentado's motion for reconsideration. Aumentado then filed a petition for review[19] under Rule 43 of the Rules of Court with the CA where it was docketed as CA-G.R. SP No. 70255.

On March 31, 2003, the CA rendered the herein challenged Decision,[20] granting Aumentado's petition. The CA reversed and set aside CSC Resolution No. 011812 and ruled that Quirog's appeal should have been dismissed outright for lack of legal personality:

> WHEREFORE, based on the foregoing premises, the instant petition is hereby GRANTED, the assailed CSC Resolution Nos. 011812 and 020271, dated November 20, 2001 and February 22, 2002 respectively, are REVERSED and SET ASIDE. The CSCROVII's June 28, 2001 Order and its July 23, 2001 Decision are hereby REINSTATED.
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> SO ORDERED.

On April 12, 2004, the CA rendered the second assailed Resolution,[21] denying Quirog and Relampagos' motion for reconsideration.

From the adverse decision of the CA, the CSC as well as Relampagos and Quirog interposed separate petitions for review on *certiorari*. Relampagos and Quirog's petition[22] filed on June 25, 2004, was docketed as G.R. No. 163443, while the CSC's petition[23] filed on July 8, 2004, was docketed as G.R. No. 163568.

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[18] G.R. No. 163443, *Rollo*, pp. 113-120.

[19] *Id.* at 121-138.

[20] *Supra* note 1.

[21] *Supra* note 2.

[22] G.R. No. 163443, *rollo*, pp. 10-34.

[23] G.R. No. 163568, *id.*, at 10-19.

In the Resolution[24] dated July 13, 2004, the Court ordered the consolidation of the two petitions.

The consolidated petitions present the following issues for the Court's resolution: (1) whether or not petitioners Relampagos and Quirog have the legal standing to file a motion for reconsideration of, or appeal from, the disapproval of the latter's appointment by the Civil Service Commission, (2) whether or not Quirog's appointment violated Item 3 of CSC Resolution No. 010988 dated June 4, 2001, and 3) whether or not the subject appointment was a *midnight appointment*.

In the herein challenged decision, the CA held that only the appointing authority could challenge the CSC's disapproval of an appointment. In arriving at such a conclusion, the CA relied solely on Section 2 of Rule VI of CSC Memorandum Circular (MC) No. 40, series of 1998[25] which provides:

> Sec. 2. Requests for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) days from receipt of the disapproved appointment.

The petitioners share the view that the word *may* in the afore-quoted provision simply means that a request for reconsideration or appeal from a disapproved appointment is not vested exclusively in the appointing authority and that Quirog's appeal should have been given due course because she was the real party-in-interest, being the one aggrieved by the disapproval of the appointment.

Petitioners Quirog and Relampagos contend that their appeal before the CA should not have been dismissed on a mere technicality such as lack of legal personality. They argued that litigants must be afforded full opportunity for the adjudication of their case on the merits.

The CSC for its part, pointed out that in previously decided cases, the CSC allowed the appointees to take relief from the

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[24] *Id.* at 32.

[25] Revised Omnibus Rules on Appointments and Other Personnel Actions.

disapproval of their appointments as an exception to the rule on legal standing.

Upon the other hand, respondent Aumentado maintains that the controlling rule on the matter of legal standing is the aforecited Section 2, Rule VI, CSC MC No. 40, series of 1998. He anchors his argument in *Mathay, Jr. v. Civil Service Commission*,[26] where the Court laid down the ruling that only the appointing authority can request for reconsideration of a CSC-disapproved appointment.

The Court rules for the petitioners.

In the recent case of *Abella, Jr. v. Civil Service Commission*,[27] the Court declared that both the appointing authority and the appointee are equally real parties in interest who have the requisite legal standing to bring an action challenging a CSC disapproval of an appointment. In said case, we held that:

> The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval. Thus, Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 is justified insofar as it allows the appointing authority to request reconsideration or appeal.
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> Although the earlier discussion demonstrates that the appointing authority is adversely affected by the CSC's Order and is a real party in interest, the appointee is rightly a real party in interest too. He is also injured by the CSC disapproval, because he is prevented from assuming the office in a permanent capacity. Moreover, he would necessarily benefit if a favorable judgment is obtained, as an approved appointment would confer on him all the rights and privileges of a permanent appointee.
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> Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 should not be interpreted to restrict solely to the appointing authority

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[26] G.R. No. 130214, August 9, 1999, 312 SCRA 91, 99-100.

[27] G.R. No. 152574, November 17, 2004, 442 SCRA 507.

the right to move for a reconsideration of, or to appeal, the disapproval of an appointment. PD 807 and EO 292, from which the CSC derives the authority to promulgate its rules and regulations, are silent on whether appointees have a similar right to file motions for reconsideration of, or appeals from, unfavorable decisions involving appointments. Indeed, there is no legislative intent to bar appointees from challenging the CSC's disapproval.

The view that only the appointing authority may request reconsideration or appeal is too narrow. The appointee should have the same right. Parenthetically, CSC Resolution 99-1936 recognizes the right of the adversely affected party to appeal to the CSC Regional Offices prior to elevating a matter to the CSC Central Office. The adversely affected party necessarily includes the appointee.[28]

Also, in *Abella, Jr.,* we held that the right of the appointee to seek reconsideration or appeal was not the main issue in *Mathay*:

This judicial pronouncement does not override *Mathay v. Civil Service Commission* x x x. The Court merely noted in passing — by way of obiter — that based on a similar provision, only the appointing officer could request reconsideration of actions taken by the CSC on appointments.

In that case, Quezon City Mayor Ismael A. Mathay Jr. sought the nullification of CSC Resolutions that recalled his appointment of a city government officer. He filed a Petition assailing the CA Decision, which had previously denied his Petition for *Certiorari* for being the wrong remedy and for being filed out of time. We observed then that the CSC Resolutions were already final and could no longer be elevated to the CA. Furthermore, Mathay's Petition for *Certiorari* filed with the CA was improper, because there was an available remedy of appeal. And the CSC could not have acted without jurisdiction, considering that it was empowered to recall an appointment initially approved.

The right of the appointee to seek reconsideration or appeal was not the main issue in Mathay. At any rate, the present case is being decided *en banc*, and the ruling may reverse previous doctrines laid down by this Court.[29]

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[28] *Id.* at 518, 521-522.

[29] *Id.* at 523-524.

Clearly, pursuant to *Abella, Jr.*, Quirog had the right to ask for reconsideration of, or to appeal the adverse ruling of CSCROVII. In contrast, Relampagos, by reason of the expiration of his term as governor, had lost the legal personality to contest the disapproval of the appointment.

As to the validity of Quirog's appointment, the CSCROVII disapproved Quirog's appointment for non-compliance with Item No. 3 of CSC Resolution No. 010988 dated June 4, 2001. Item No. 3 refers to the disapproval of appointments unless certain requisites are complied with. Item No. 3 reads:

> 3. All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, x x x which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, x x x shall be disapproved unless the following requisites concur relative to their issuance:
>
> a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting;
>
> b) That the appointee is qualified;
>
> c) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety;
>
> d) That the appointment is not one of those mass appointments issued after the elections.

The CSC ruled that the promotional appointment extended to Quirog by Governor Relampagos was not violative of the aforesaid CSC Resolution. This interpretation by the CSC of its own rules should be given great weight and consideration for after all, it is the agency tasked with interpreting or applying the same.

Records disclose that on May 28, 2001, the PSB of the Human Resource Management and Development Office of Bohol, issued a certification[30] that Quirog was one of two candidates qualified for the position of PGDH-OPA. On the same day, Quirog was appointed by then Governor Relampagos and on June 1, 2001,

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[30] *Supra* note 6.

she took her oath of office. CSC Resolution No. 010988 was issued three days later, or on June 4, 2001. Evidently, the CSCROVII should not have subjected Quirog's appointment to the requirements under said resolution, as its application is against the prospective application of laws. Having no provision regarding its retroactive application to appointments made prior to its effectivity, CSC Resolution No. 010988 must be taken to be of prospective application. As we have held time and again:

> Since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used.[31]

Prescinding therefrom, it cannot be said that Quirog's appointment violated CSC Resolution No. 010988, the said Resolution having taken effect after the questioned appointment was extended.

It cannot also be said that Quirog's appointment was a *midnight appointment*. The constitutional prohibition on so-called *midnight appointments*, specifically, those made within two (2) months immediately prior to the next presidential elections, applies only to the President or Acting President.[32]

As the Court ruled in *De Rama v. CA*[33];

> The records reveal that when the petitioner brought the matter of recalling the appointments of the fourteen (14) private respondents before the CSC, the only reason he cited to justify his action was

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[31] *Paloma v. Mora, et al*., G.R. No. 157783, September 23, 2005, 470 SCRA 711, 723.

[32] The constitutional provision referred to is Section 15, Article VII which states: "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

[33] G.R. No. 131136, February 28, 2001, 353 SCRA 95, 102.

that these were *midnight appointments* that are forbidden under Article VII, Section 15 of the Constitution. However, the CSC ruled, and correctly so, that the said prohibition applies only to presidential appointments. In truth and in fact, there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure.

We, however, hasten to add that the aforementioned ruling does not mean that the *raison d' etre* behind the prohibition against midnight appointments may not be applied to those made by chief executives of local government units, as here. Indeed, the prohibition is precisely designed to discourage, nay, even preclude, losing candidates from issuing appointments merely for partisan purposes thereby depriving the incoming administration of the opportunity to make the corresponding appointments in line with its new policies. As we held in *Aytona v. Castillo*:

> The filling up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted. **But the issuance of 350 appointments in one night and the planned induction of almost all of them in a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments**.[34] (Emphasis ours)

The appointment of Quirog cannot be categorized as a *midnight appointment*. For it is beyond dispute that Quirog had been discharging and performing the duties concomitant with the subject position for a year prior to her permanent appointment thereto. Surely, the fact that she was only permanently appointed to the position of PGDH-OPA after a year of being the Acting Provincial Agriculturist more than adequately shows that the filling up of the position resulted from deliberate action and a careful consideration of the need for the appointment and the appointee's

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[34] *Supra* note 14 at 10.

qualifications. The fact that Quirog had been the Acting Provincial Agriculturist since June 2000 all the more highlights the public need for said position to be permanently filled up.

Besides, as correctly held by the CSC:

> A careful evaluation of the circumstances obtaining in the issuance of the appointment of Quirog shows the absence of the element of hurriedness on the part of former Governor Relampagos which characterizes a midnight appointment. There is also wanting in the records of the case the subversion by the former governor of the policies of the incumbent Governor Erico Aumentado as a logical consequence of the issuance of Quirog's appointment by the latter. Both elements are the primordial considerations by the Supreme Court when it laid down its ruling in prohibiting midnight appointments in the landmark case of *Aytona vs Castillo, et al.*[35]

In any event, respondent Governor Aumentado, in a Memorandum[36] dated March 4, 2003, has reinstated Quirog to the permanent position of PGDH-OPA. Such act of respondent bespeaks of his acceptance of the validity of Quirog's appointment and recognition that indeed, the latter is qualified for the subject position.

WHEREFORE, the assailed Decision dated March 31, 2003 and the Resolution dated April 12, 2004 of the Court of Appeals are *REVERSED AND SET ASIDE* and CSC Resolution Nos. 011812 and 020271 dated November 20, 2001 and February 22, 2002, respectively, are *AFFIRMED*.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Brion, JJ.,* concur.

Ynares-Santiago, J., on leave.

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[35] G.R. No.163443; *rollo,* p. 74.

[36] *Id.* at 193.

SECOND DIVISION

[G.R. No. 163942. November 11, 2008]

NATIONAL UNION OF WORKERS IN THE HOTEL RESTAURANT AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF) DUSIT HOTEL NIKKO CHAPTER, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS (Former Eighth Division), THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), PHILIPPINE HOTELIERS INC., owner and operator of DUSIT HOTEL NIKKO and/or CHIYUKI FUJIMOTO, and ESPERANZA V. ALVEZ,** *respondents.*

[G.R. No. 166295. November 11, 2008]

NUWHRAIN-DUSIT HOTEL NIKKO CHAPTER, *petitioner, vs.* **SECRETARY OF LABOR AND EMPLOYMENT and PHILIPPINE HOTELIERS, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; PAYROLL REINSTATEMENT; CASE AT BAR. — The peculiar circumstances in the present case validate the Secretary's decision to order payroll reinstatement instead of actual reinstatement. It is obviously impracticable for the Hotel to actually reinstate the employees who shaved their heads or cropped their hair because this was exactly the reason they were prevented from working in the first place. Further, as with most labor disputes which have resulted in strikes, there is mutual antagonism, enmity, and animosity between the union and the management. Payroll reinstatement, most especially in this case, would have been the only avenue where further incidents and damages could be avoided. Public officials entrusted with specific jurisdictions enjoy great confidence from this Court. The Secretary surely meant only to ensure industrial peace as she assumed jurisdiction over the labor dispute. In this case, we are not ready to substitute our own

findings in the absence of a clear showing of grave abuse of discretion on her part.

2. ID.; LABOR RELATIONS; ILLEGAL STRIKE; VARIOUS CATEGORIES. — Art. 212(o) of the Labor Code defines a strike as "any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute." In *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission* , we cited the various categories of an illegal strike, to wit: Noted authority on labor law, Ludwig Teller, lists six (6) categories of an illegal strike, *viz*.: (1) [when it] is contrary to a specific prohibition of law, such as strike by employees performing governmental functions; or (2) [when it] violates a specific requirement of law [, such as Article 263 of the Labor Code on the requisites of a valid strike]; or (3) [when it] is declared for an unlawful purpose, such as inducing the employer to commit an unfair labor practice against non-union employees; or (4) [when it] employs unlawful means in the pursuit of its objective, such as a widespread terrorism of non-strikers [for example, prohibited acts under Art. 264 (e) of the Labor Code] ; or (5) [when it] is declared in violation of an existing injunction [, such as injunction, prohibition, or order issued by the DOLE Secretary and the NLRC under Art. 263 of the Labor Code]; or (6) [when it] is contrary to an existing agreement, such as a no-strike clause or conclusive arbitration clause.

3. ID.; ID.; STRIKE; 30-DAY COOLING-OFF PERIOD AND SEVEN-DAY STRIKE BAN; CASE AT BAR. — [T]he Union failed to observe the mandatory **30-day cooling off period** and the **seven-day strike ban** before it conducted the strike on January 18, 2002. The NLRC correctly held that the Union failed to observe the mandatory periods before conducting or holding a strike. Records reveal that the Union filed its Notice of Strike on the ground of bargaining deadlock on December 20, 2001. The 30-day cooling off period should have been until January 19, 2002. On top of that, the strike vote was held on January 14, 2002 and was submitted to the NCMB only on January 18, 2002: therefore, the 7-day strike ban should have prevented them from holding a strike until January 25, 2002. The concerted action committed by the Union on January 18, 2002 which resulted in the disruption of the Hotel's operations clearly violated the above-stated mandatory periods.

4. ID.; ID.; ILLEGAL STRIKE; DISTINCTION BETWEEN UNION OFFICERS AND UNION MEMBERS. — Regarding the Union officers and members' liabilities for their participation in the illegal picket and strike, Art. 264(a), paragraph 3 of the Labor Code provides that **"[a]ny union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status x x x."** The law makes a distinction between union officers and mere union members. Union officers may be validly terminated from employment for their participation in an illegal strike, while union members have to participate in and commit illegal acts for them to lose their employment status. Thus, it is necessary for the company to adduce proof of the participation of the striking employees in the commission of illegal acts during the strikes.

5. ID.; ID.; ID.; ID.; UNION MEMBERS WHO PARTICIPATED IN AN ILLEGAL STRIKE BUT WERE NOT IDENTIFIED TO HAVE COMMITTED ILLEGAL ACTS ARE ENTITLED TO BE REINSTATED TO THEIR FORMER POSITIONS BUT WITHOUT BACKWAGES.—Further, we held in one case that union members who participated in an illegal strike but were not identified to have committed illegal acts are entitled to be reinstated to their former positions but without backwages. We then held in *G & S Transport Corporation v. Infante*: With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officer's Guild v. Compañia Maritima,* as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union,* the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar.

APPEARANCES OF COUNSEL

Sentro ng Alternatibong Lingap Panlegal (SALIGAN) for Nuwhrain-Dusit Nikko Chapter.

The Solicitor General for public respondent.

P.R. Cruz Law Office for Phil. Hoteliers, Inc.

Jose T. Collado, Jr. & A. Gerardo B. Collado and *Solon R. Garcia* for petitioner in G.R. No. 163942.

D E C I S I O N

VELASCO, JR., *J.*:

In G.R. No. 163942, the Petition for Review on *Certiorari* under Rule 45 of the National Union of Workers in the Hotel Restaurant and Allied Industries Dusit Hotel Nikko Chapter (Union) seeks to set aside the January 19, 2004 Decision[1] and June 1, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76568 which affirmed the October 9, 2002 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CC No. 000215-02.

In G.R. No. 166295, the Petition for *Certiorari* under Rule 65 of the Union seeks to nullify the May 6, 2004 Decision[4] and November 25, 2004 Resolution[5] of the CA in CA-G.R. SP No. 70778 which affirmed the January 31, 2002[6] and March 15,

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[1] *Rollo* (G.R. No. 163942), pp. 90-100. Penned by then Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale.

[2] *Id.* at 103.

[3] *Id.* at 238-285. Penned by Presiding Commissioner Roy V. Señeres and concurred in by Commissioner Vicente S.E. Veloso.

[4] *Rollo* (G.R. No. 166295), pp. 20-28. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Marina L. Buzon and Mariano C. Del Castillo.

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

[6] *Id.* at 31-36.

2002[7] Orders of the Secretary of Labor and Employment, Patricia A. Sto. Tomas (Secretary).

Evolution of the Present Petitions

The Union is the certified bargaining agent of the regular rank-and-file employees of Dusit Hotel Nikko (Hotel), a five star service establishment owned and operated by Philippine Hoteliers, Inc. located in Makati City. Chiyuki Fuijimoto and Esperanza V. Alvez are impleaded in their official capacities as the Hotel's General Manager and Director of Human Resources, respectively.

On October 24, 2000, the Union submitted its Collective Bargaining Agreement (CBA) negotiation proposals to the Hotel. As negotiations ensued, the parties failed to arrive at mutually acceptable terms and conditions. Due to the bargaining deadlock, the Union, on December 20, 2001, filed a Notice of Strike on the ground of the bargaining deadlock with the National Conciliation and Mediation Board (NCMB), which was docketed as NCMB-NCR-NS-12-369-01. Thereafter, conciliation hearings were conducted which proved unsuccessful. Consequently, a Strike Vote[8] was conducted by the Union on January 14, 2002 on which it was decided that the Union would wage a strike.

Soon thereafter, in the afternoon of January 17, 2002, the Union held a general assembly at its office located in the Hotel's basement, where some members sported closely cropped hair or cleanly shaven heads. The next day, or on January 18, 2002, more male Union members came to work sporting the same hair style. The Hotel prevented these workers from entering the premises claiming that they violated the Hotel's Grooming Standards.

In view of the Hotel's action, the Union staged a picket outside the Hotel premises. Later, other workers were also prevented from entering the Hotel causing them to join the picket. For this reason the Hotel experienced a severe lack of manpower

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[7] *Id.* at 37-45.

[8] *Rollo* (G.R. No. 163942), p. 700.

which forced them to temporarily cease operations in three restaurants.

Subsequently, on January 20, 2002, the Hotel issued notices to Union members, preventively suspending them and charging them with the following offenses: (1) violation of the duty to bargain in good faith; (2) illegal picket; (3) unfair labor practice; (4) violation of the Hotel's Grooming Standards; (5) illegal strike; and (6) commission of illegal acts during the illegal strike. The next day, the Union filed with the NCMB a second Notice of Strike on the ground of unfair labor practice and violation of Article 248(a) of the Labor Code on illegal lockout, which was docketed as NCMB-NCR-NS-01-019-02. In the meantime, the Union officers and members submitted their explanations to the charges alleged by the Hotel, while they continued to stage a picket just inside the Hotel's compound.

On January 26, 2002, the Hotel terminated the services of twenty-nine (29) Union officers and sixty-one (61) members; and suspended eighty-one (81) employees for 30 days, forty-eight (48) employees for 15 days, four (4) employees for 10 days, and three (3) employees for five days. On the same day, the Union declared a strike. Starting that day, the Union engaged in picketing the premises of the Hotel. During the picket, the Union officials and members unlawfully blocked the ingress and egress of the Hotel premises.

Consequently, on January 31, 2002, the Union filed its third Notice of Strike with the NCMB which was docketed as NCMB-NCR-NS-01-050-02, this time on the ground of unfair labor practice and union-busting.

On the same day, the Secretary, through her January 31, 2002 Order, assumed jurisdiction over the labor dispute and certified the case to the NLRC for compulsory arbitration, which was docketed as NLRC NCR CC No. 000215-02. The Secretary's Order partly reads:

WHEREFORE, in order to have a complete determination of the bargaining deadlock and the other incidents of the dispute, this Office hereby consolidates the two Notices of Strike — NCMB-NCR-NS-

12-369-01 and NCMB-NCR-NS-01-019-02 — and CERTIFIES the entire labor dispute covered by these Notices and the intervening events, to the NATIONAL LABOR RELATIONS COMMISSION for compulsory arbitration pursuant to Article 263 (g) of the Labor Code, as amended, under the following terms:

x x x x x x x x x

d. the Hotel is given the option, in lieu of actual reinstatement, to merely **reinstate** the dismissed or suspended workers in the **payroll** in light of the special circumstances attendant to their reinstatement;

x x x x x x x x x

SO ORDERED. (Emphasis added.)

Pursuant to the Secretary's Order, the Hotel, on February 1, 2002, issued an Inter-Office Memorandum,[9] directing some of the employees to return to work, while advising others not to do so, as they were placed under payroll reinstatement.

Unhappy with the Secretary's January 31, 2002 Order, the Union moved for reconsideration, but the same was denied per the Secretary's subsequent March 15, 2002 Order. Affronted by the Secretary's January 31, 2002 and March 15, 2002 Orders, the Union filed a Petition for *Certiorari* with the CA which was docketed as CA-G.R. SP No. 70778.

Meanwhile, after due proceedings, the NLRC issued its October 9, 2002 Decision in NLRC NCR CC No. 000215-02, in which it ordered the Hotel and the Union to execute a CBA within 30 days from the receipt of the decision. The NLRC also held that the January 18, 2002 concerted action was an illegal strike in which illegal acts were committed by the Union; and that the strike violated the "No Strike, No Lockout" provision of the CBA, which thereby caused the dismissal of 29 Union officers and 61 Union members. The NLRC ordered the Hotel to grant the 61 dismissed Union members financial assistance in the amount of ½ month's pay for every year of service or their retirement benefits under their retirement plan whichever was

[9] *Id.* at 361-373.

higher. The NLRC explained that the strike which occurred on January 18, 2002 was illegal because it failed to comply with the mandatory **30-day cooling-off period**[10] and the **seven-day strike ban**,[11] as the strike occurred only 29 days after the submission of the notice of strike on December 20, 2001 and only four days after the submission of the strike vote on January 14, 2002. The NLRC also ruled that even if the Union had complied with the temporal requirements mandated by law, the strike would nonetheless be declared illegal because it was attended by illegal acts committed by the Union officers and members.

The Union then filed a Motion for Reconsideration of the NLRC's Decision which was denied in the February 7, 2003 NLRC Resolution. Unfazed, the Union filed a Petition for *Certiorari* under Rule 65 with the CA, docketed as CA-G.R. SP No. 76568, and assailed both the October 9, 2002 Decision and the February 7, 2003 Resolution of the NLRC.

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[10] ART. 263. STRIKES, PICKETING, AND LOCKOUTS

x x x x x x x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

[11] ART. 263(f). A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven [7] days before the intended strike or lockout, subject to the cooling-off period herein provided.

Soon thereafter, the CA promulgated its January 19, 2004 Decision in CA-G.R. SP No. 76568 which dismissed the Union's petition and affirmed the rulings of the NLRC. The CA ratiocinated that the Union failed to demonstrate that the NLRC committed grave abuse of discretion and capriciously exercised its judgment or exercised its power in an arbitrary and despotic manner.

For this reason, the Union filed a Motion for Reconsideration which the CA, in its June 1, 2004 Resolution, denied for lack of merit.

In the meantime, the CA promulgated its May 6, 2004 Decision in CA-G.R. SP No. 70778 which denied due course to and consequently dismissed the Union's petition. The Union moved to reconsider the Decision, but the CA was unconvinced and denied the motion for reconsideration in its November 25, 2004 Resolution.

Thus, the Union filed the present petitions.

The Union raises several interwoven issues in G.R. No. 163942, most eminent of which is whether the Union conducted an illegal strike. The issues presented for resolution are:

-A-

WHETHER OR NOT THE UNION, THE 29 UNION OFFICERS AND 61 MEMBERS MAY BE ADJUDGED GUILTY OF STAGING AN ILLEGAL STRIKE ON JANUARY 18, 2002 DESPITE RESPONDENTS' ADMISSION THAT THEY PREVENTED SAID OFFICERS AND MEMBERS FROM REPORTING FOR WORK FOR ALLEGED VIOLATION OF THE HOTEL'S GROOMING STANDARDS

-B-

WHETHER OR NOT THE 29 UNION OFFICERS AND 61 MEMBERS MAY VALIDLY BE DISMISSED AND MORE THAN 200 MEMBERS BE VALIDLY SUSPENDED ON THE BASIS OF FOUR (4) SELF-SERVING AFFIDAVITS OF RESPONDENTS

-C-

WHETHER OR NOT RESPONDENTS IN PREVENTING UNION OFFICERS AND MEMBERS FROM REPORTING FOR WORK COMMITTED AN ILLEGAL LOCK-OUT[12]

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[12] *Rollo* (G.R. No. 163942), p. 36.

In G.R. No. 166295, the Union solicits a riposte from this Court on whether the Secretary has discretion to impose "payroll" reinstatement when he assumes jurisdiction over labor disputes.

The Court's Ruling

The Court shall first dispose of G.R. No. 166295.

According to the Union, there is no legal basis for allowing payroll reinstatement in lieu of actual or physical reinstatement. As argued, Art. 263(g) of the Labor Code is clear on this point.

The Hotel, on the other hand, claims that the issue is now moot and any decision would be impossible to execute in view of the Decision of the NLRC which upheld the dismissal of the Union officers and members.

The Union's position is untenable.

The Hotel correctly raises the argument that the issue was rendered moot when the NLRC upheld the dismissal of the Union officers and members. In order, however, to settle this relevant and novel issue involving the breadth of the power and jurisdiction of the Secretary in assumption of jurisdiction cases, we now decide the issue on the merits instead of relying on mere technicalities.

We held in *University of Immaculate Concepcion, Inc. v. Secretary of Labor*:

> With respect to the Secretary's Order allowing payroll reinstatement instead of actual reinstatement for the individual respondents herein, an amendment to the previous Orders issued by her office, the same is usually not allowed. Article 263(g) of the Labor Code aforementioned states that all workers must immediately return to work and all employers must readmit all of them under the same terms and conditions prevailing before the strike or lockout. The phrase "under the same terms and conditions" makes it clear that the norm is actual reinstatement. This is consistent with the idea that any work stoppage or slowdown in that particular industry can be detrimental to the national interest.[13]

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[13] G.R. No. 151379, January 14, 2005, 448 SCRA 190, 201.

Thus, it was settled that in assumption of jurisdiction cases, the Secretary should impose actual reinstatement in accordance with the intent and spirit of Art. 263(g) of the Labor Code. As with most rules, however, this one is subject to exceptions. We held in *Manila Diamond Hotel Employees' Union v. Court of Appeals* that payroll reinstatement is a departure from the rule, and special circumstances which make actual reinstatement impracticable must be shown.[14] In one case, payroll reinstatement was allowed where the employees previously occupied confidential positions, because their actual reinstatement, the Court said, would be impracticable and would only serve to exacerbate the situation.[15] In another case, this Court held that the NLRC did not commit grave abuse of discretion when it allowed payroll reinstatement as an option in lieu of actual reinstatement for teachers who were to be reinstated in the middle of the first term.[16] We held that the NLRC was merely trying its best to work out a satisfactory *ad hoc* solution to a festering and serious problem.[17]

The peculiar circumstances in the present case validate the Secretary's decision to order payroll reinstatement instead of actual reinstatement. It is obviously impracticable for the Hotel to actually reinstate the employees who shaved their heads or cropped their hair because this was exactly the reason they were prevented from working in the first place. Further, as with most labor disputes which have resulted in strikes, there is mutual antagonism, enmity, and animosity between the union and the management. Payroll reinstatement, most especially in this case, would have been the only avenue where further incidents and damages could be avoided. Public officials entrusted with specific jurisdictions enjoy great confidence from this Court. The Secretary surely meant only to ensure industrial peace as

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[14] G.R. No. 140518, December 16, 2004, 447 SCRA 97, 106.

[15] *University of Immaculate Concepcion, Inc.*, *supra* at 202.

[16] *University of Santo Tomas v. NLRC*, G.R. No. 89920, October 18, 1990, 190 SCRA 758.

[17] *Id.* at 769.

she assumed jurisdiction over the labor dispute. In this case, we are not ready to substitute our own findings in the absence of a clear showing of grave abuse of discretion on her part.

The issues raised in G.R. No. 163942, being interrelated, shall be discussed concurrently.

To be determined whether legal or not are the following acts of the Union:

(1) Reporting for work with their bald or cropped hair style on January 18, 2002; and

(2) The picketing of the Hotel premises on January 26, 2002.

The Union maintains that the mass picket conducted by its officers and members did not constitute a strike and was merely an expression of their grievance resulting from the lockout effected by the Hotel management. On the other hand, the Hotel argues that the Union's deliberate defiance of the company rules and regulations was a concerted effort to paralyze the operations of the Hotel, as the Union officers and members knew pretty well that they would not be allowed to work in their bald or cropped hair style. For this reason, the Hotel argues that the Union committed an illegal strike on January 18, 2002 and on January 26, 2002.

We rule for the Hotel.

Art. 212(o) of the Labor Code defines a strike as "any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute."

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, we cited the various categories of an illegal strike, to wit:

> Noted authority on labor law, Ludwig Teller, lists six (6) categories of an illegal strike, *viz.:*
>
> (1) [when it] is contrary to a specific prohibition of law, such as strike by employees performing governmental functions; or
> (2) [when it] violates a specific requirement of law[, such as Article 263 of the Labor Code on the requisites of a valid strike]; or

(3) [when it] is declared for an unlawful purpose, such as inducing the employer to commit an unfair labor practice against non-union employees; or
(4) [when it] employs unlawful means in the pursuit of its objective, such as a widespread terrorism of non-strikers [for example, prohibited acts under Art. 264(e) of the Labor Code]; or
(5) [when it] is declared in violation of an existing injunction[, such as injunction, prohibition, or order issued by the DOLE Secretary and the NLRC under Art. 263 of the Labor Code]; or
(6) [when it] is contrary to an existing agreement, such as a no-strike clause or conclusive arbitration clause.[18]

With the foregoing parameters as guide and the following grounds as basis, we hold that the Union is liable for conducting an illegal strike for the following reasons:

First, the Union's violation of the Hotel's Grooming Standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the Hotel and was, therefore, not a protected action. The appearances of the Hotel employees directly reflect the character and well-being of the Hotel, being a five-star hotel that provides service to top-notch clients. Being bald or having cropped hair per se does not evoke negative or unpleasant feelings. The reality that a substantial number of employees assigned to the food and beverage outlets of the Hotel with full heads of hair suddenly decided to come to work bald-headed or with cropped hair, however, suggests that something is amiss and insinuates a sense that something out of the ordinary is afoot. Obviously, the Hotel does not need to advertise its labor problems with its clients. It can be gleaned from the records before us that the Union officers and members deliberately and in apparent concert shaved their heads or cropped their hair. This was shown by the fact that after coming to work on January 18, 2002, some Union members even had their heads shaved or their hair cropped at the Union office in

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[18] G.R. Nos. 158786 & 158789 & 158798-99, October 19, 2007, 537 SCRA 171, 199-200; citing II Azucena, Jr., *The Labor Code* 528 (6th ed., 2007).

the Hotel's basement. Clearly, the decision to violate the company rule on grooming was designed and calculated to place the Hotel management on its heels and to force it to agree to the Union's proposals.

In view of the Union's collaborative effort to violate the Hotel's Grooming Standards, it succeeded in forcing the Hotel to choose between allowing its inappropriately hair styled employees to continue working, to the detriment of its reputation, or to refuse them work, even if it had to cease operations in affected departments or service units, which in either way would disrupt the operations of the Hotel. This Court is of the opinion, therefore, that the act of the Union was not merely an expression of their grievance or displeasure but, indeed, a calibrated and calculated act designed to inflict serious damage to the Hotel's finances or its reputation. Thus, we hold that the Union's concerted violation of the Hotel's Grooming Standards which resulted in the temporary cessation and disruption of the Hotel's operations is an unprotected act and should be considered as an illegal strike.

Second, the Union's concerted action which disrupted the Hotel's operations clearly violated the CBA's "No Strike, No Lockout" provision, which reads:

ARTICLE XXII – NO STRIKE/WORK STOPPAGE AND LOCKOUT

SECTION 1. No Strikes

The Union agrees that there shall be no strikes, walkouts, stoppage or slow-down of work, boycott, refusal to handle accounts, picketing, sit-down strikes, sympathy strikes or any other form of interference and/or interruptions with any of the normal operations of the HOTEL during the life of this Agreement.

The facts are clear that the strike arose out of a bargaining deadlock in the CBA negotiations with the Hotel. The concerted action is an economic strike upon which the afore-quoted "no strike/work stoppage and lockout" prohibition is squarely applicable and legally binding.[19]

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[19] *Philippine Metal Foundaries, Inc. v. CIR*, Nos. L-34948-49, May 15, 1979, 90 SCRA 135, 141.

Third, the Union officers and members' concerted action to shave their heads and crop their hair not only violated the Hotel's Grooming Standards but also violated the Union's duty and responsibility to bargain in good faith. By shaving their heads and cropping their hair, the Union officers and members violated then Section 6, Rule XIII of the Implementing Rules of Book V of the Labor Code.[20] This rule prohibits the commission of any act which will disrupt or impede the early settlement of the labor disputes that are under conciliation. Since the bargaining deadlock is being conciliated by the NCMB, the Union's action to have their officers and members' heads shaved was manifestly calculated to antagonize and embarrass the Hotel management and in doing so effectively disrupted the operations of the Hotel and violated their duty to bargain collectively in good faith.

Fourth, the Union failed to observe the mandatory **30-day cooling-off period** and the **seven-day strike ban** before it conducted the strike on January 18, 2002. The NLRC correctly held that the Union failed to observe the mandatory periods before conducting or holding a strike. Records reveal that the Union filed its Notice of Strike on the ground of bargaining deadlock on December 20, 2001. The 30-day cooling-off period should have been until January 19, 2002. On top of that, the strike vote was held on January 14, 2002 and was submitted to the NCMB only on January 18, 2002; therefore, the 7-day strike ban should have prevented them from holding a strike until January 25, 2002. The concerted action committed by the Union on January 18, 2002 which resulted in the disruption of the Hotel's operations clearly violated the above-stated mandatory periods.

Last, the Union committed illegal acts in the conduct of its strike. The NLRC ruled that the strike was illegal since, as shown by the pictures[21] presented by the Hotel, the Union officers and members formed human barricades and obstructed the

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[20] Now Rule XXII, Sec. 9, par. 2 of the RULES IMPLEMENTING BOOK V OF THE LABOR CODE.

[21] *Rollo* (G.R. No. 163942), pp. 1442-1443.

driveway of the Hotel. There is no merit in the Union's argument that it was not its members but the Hotel's security guards and the police officers who blocked the driveway, as it can be seen that the guards and/or police officers were just trying to secure the entrance to the Hotel. The pictures clearly demonstrate the tense and highly explosive situation brought about by the strikers' presence in the Hotel's driveway.

Furthermore, this Court, not being a trier of facts, finds no reason to alter or disturb the NLRC findings on this matter, these findings being based on substantial evidence and affirmed by the CA.[22] Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[23] Likewise, we are not duty-bound to delve into the accuracy of the factual findings of the NLRC in the absence of clear showing that these were arrived at arbitrarily and/or bereft of any rational basis.[24]

What then are the consequent liabilities of the Union officers and members for their participation in the illegal strike?

Regarding the Union officers and members' liabilities for their participation in the illegal picket and strike, Art. 264(a), paragraph 3 of the Labor Code provides that "**[a]ny union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status x x x**." The law makes a distinction between union officers and mere union members. Union officers may be validly terminated from employment for their participation in an illegal strike, while union members have

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[22] *Stamford Marketing Corporation v. Julian*, G.R. No. 145496, February 24, 2004, 423 SCRA 633, 651.

[23] *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*, G.R. No. 145561, June 15, 2005, 460 SCRA 186, 191.

[24] *Toyota Motor Phils. Corp. Workers Association (TMPCWA)*, *supra* note 18, at 208.

to participate in and commit illegal acts for them to lose their employment status.[25] Thus, it is necessary for the company to adduce proof of the participation of the striking employees in the commission of illegal acts during the strikes.[26]

Clearly, the 29 Union officers may be dismissed pursuant to Art. 264(a), par. 3 of the Labor Code which imposes the penalty of dismissal on "**any union officer who knowingly participates in an illegal strike**." We, however, are of the opinion that there is room for leniency with respect to the Union members. It is pertinent to note that the Hotel was able to prove before the NLRC that the strikers blocked the ingress to and egress from the Hotel. But it is quite apparent that the Hotel failed to specifically point out the participation of each of the Union members in the commission of illegal acts during the picket and the strike. For this lapse in judgment or diligence, we are constrained to reinstate the 61 Union members.

Further, we held in one case that union members who participated in an illegal strike but were not identified to have committed illegal acts are entitled to be reinstated to their former positions but without backwages.[27] We then held in *G & S Transport Corporation v. Infante*:

> With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officer's Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that for this exception to apply, it is required

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[25] *Id.* at 209.

[26] *Id.* at 212.

[27] *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*, G.R. No. 158075, June 30, 2006, 494 SCRA 195, 212 & 217.

that the strike be legal, a situation that does not obtain in the case at bar.[28]

In this light, we stand by our recent rulings and reinstate the 61 Union members without backwages.

WHEREFORE, premises considered, the CA's May 6, 2004 Decision in CA-G.R. SP No. 70778 is hereby *AFFIRMED*.

The CA's January 19, 2004 Decision in CA-G.R. SP No. 76568 is hereby *SET ASIDE*. The October 9, 2002 Decision of the NLRC in NLRC NCR CC No. 000215-02 is hereby *AFFIRMED* with *MODIFICATIONS*, as follows:

The 29 Union officials are hereby declared to have lost their employment status, to wit:

1. LEO ANTONIO ATUTUBO
2. EDWIN E. BALLESTEROS
3. LORETTA DIVINA DE LUNA
4. INISUSAN DE VELEZ
5. DENNIS HABER
6. MARITES HERNANDEZ
7. BERNARD HUGO
8. NORZAMIA INTAL
9. LAURO JAVIER
10. SHANE LAUZ
11. MAY BELEN LEANO
12. EDGAR LINGHON
13. MILAGROS LOPEZ
14. JOSE MUZONES
15. RAY NERVA
16. JESUS NONAN
17. MARLYN OLLERO
18. CATHY ORDUNA
19. REYNALDO RASING
20. JUSTO TABUNDA
21. BARTOLOME TALISAYON
22. JUN TESORO
23. LYNDON TESORO
24. SALVADOR TIPONES

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[28] G.R. No. 160303, September 13, 2007, 533 SCRA 288, 301.

25. SONNY UY
26. WILFREDO VALLES, JR.
27. MEL VILLAHUCO
28. EMMA Q. DANAO
29. JORDAN ALEJANDRO

The 61 Union members are hereby *REINSTATED* to their former positions without backwages:

1. DANILO AGUINALDO
2. CLARO ABRANTE
3. FELIX ARRIESGADO
4. DAN BAUTISTA
5. MA. THERESA BONIFACIO
6. JUAN BUSCANO
7. ELY CHUA
8. ALLAN DELAGON
9. FRUMENCIO DE LEON
10. ELLIE DEL MUNDO
11. EDWIN DELOS CIENTOS
12. SOLOMON DIZON
13. YLOTSKI DRAPER
14. ERLAND COLLANTES
15. JONAS COMPENIDO
16. RODELIO ESPINUEVA
17. ARMANDO ESTACIO
18. SHERWIN FALCES
19. JELA FRANZUELA
20. REY GEALOGO
21. ALONA GERNOMINO
22. VINCENT HEMBRADOR
23. ROSLYN IBARBIA
24. JAIME IDIOMA, JR.
25. OFELIA LLABAN
26. RENATON LUZONG
27. TEODULO MACALINO
28. JAKE MACASAET
29. HERNANIE PABILONIA
30. HONORIO PACIONE
31. ANDREA VILLAFUERTE
32. MARIO PACULAN
33. JULIO PAJINAG

34. JOSELITO PASION
35. VICENTE PASIOLAN
36. HAZEL PENA
37. PEDRO POLLANTE
38. EDUARDO RAMOS
39. IMELDA RASIN
40. DELFIN RAZALAN
41. EVANGELINE REYES
42. RODOLFO REYES
43. BRIGILDO RUBIO
44. RIO SALCEDO
45. JUANITO SANCHEZ
46. MA. THERESA SANCHEZ
47. DONATO SAN AGUSTIN
48. RICARDO SOCORRO
49. VALERIO SOLIS
50. DOMINADOR SUAREZ
51. ORLANDO TABUGOCA
52. HELEN TALEON
53. ROBERT TANEGRA
54. LOURDES TAYAG
55. ROLANDO TOLENTINO
56. REYNALDO TRESNADO
57. RICHARD SABLADA
58. MAE YAP-DIANGCO
59. GILBERTO VEDASTO
60. DOMINGO VIDAROZAGA
61. DAN VILLANUEVA

In view of the possibility that the Hotel might have already hired regular replacements for the afore-listed 61 employees, the Hotel may opt to pay *SEPARATION PAY* computed at one (1) month's pay for every year of service in lieu of *REINSTATEMENT*, a fraction of six (6) months being considered one year of service.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Reyes,[*] and *Leonardo-de Castro,*[*] *JJ.*, concur.

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[*] Additional members as per April 23, 2008 raffle. Justices Dante O. Tinga and Arturo D. Brion inhibited.

THIRD DIVISION

[G.R. No. 169888. November 11, 2008]

RAMON Y. TALAGA, JR., City Mayor, Lucena City, *petitioner, vs.* **HON. SANDIGANBAYAN, 4th Division, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); SUSPENSION AND LOSS OF BENEFITS; PRE-SUSPENSION HEARING, PURPOSE. —** [T]he purpose of the law in requiring a pre-suspension hearing is to determine the validity of the information so that the court can have a basis to either suspend the accused and proceed with the trial on the merits of the case, or withhold the suspension and dismiss the case, or correct any part of the proceedings that impairs its validity. That hearing is similar to a challenge to the validity of the information by way of a motion to quash.

2. **ID.; ID.; SECTION 3(E) THEREOF, EXPLAINED. —** Section 3 (e) of R.A. No. 3019, under which petitioner is charged, provides: "Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x (e) Causing any undue injury to any party, including the Government, **or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence**. This provision shall apply to officers and employees charged with the grant of licenses or permits or other concessions." x x x [T]he law does not require that the information must allege that the acts in question "caused injury to any party, whether the government or private party." The presence of the word "or" clearly shows that there are two acts which can be prosecuted under Section 3: First, causing any undue injury to any party, including the government, and, Second, giving any private party any unwarranted benefits,

advantages or preference. Moreover, in *Quibal v. Sandiganbayan*, the Court ruled that violation of Section 3 (e) of R.A. No. 3019 requires proof of the following facts: "x x x 1. His action caused undue injury to the Government or any private party, **or gave any party any unwarranted benefit, advantage or preference to such parties**."

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; ALLEGATIONS IN AN INFORMATION, WHEN SUFFICIENT. — Section 9, Rule 110, Rules of Court provides the guideline for the determination of the validity or sufficiency of allegations in an information, to wit: "SEC. 9. *Cause of the Accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be **stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged** as well as its qualifying and aggravating circumstances and for the court to pronounce judgment." The test is whether the crime is described in intelligible terms with such particularity as to appraise the accused, with reasonable certainty, of the offense charged. The *raison d'etre* of the rule is to enable the accused to suitably prepare his defense.

4. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; EVERY LAW HAS ITS FAVOR THE PRESUMPTION OF CONSTITUTIONALITY. — Basic is the rule that every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.

5. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); POWER OF PREVENTIVE SUSPENSION; LIES IN THE COURT IN WHICH THE CRIMINAL CHARGE IS FILED. — The Anti-Graft and Corrupt Practices Act implicitly recognizes that the power of preventive suspension lies in the court in which the criminal charge is filed; once a case is filed in court, all other acts connected with the discharge of court functions — including preventive suspension — should be acknowledged as within the competence of the court that has taken cognizance thereof, no violation of the doctrine of separation of powers being

> perceivable in that acknowledgement. x x x [T]he court must first determine the validity of the information through a pre-suspension hearing. But once a proper determination of the validity of the information has been made, it becomes the ministerial duty of the court to forthwith issue the order of preventive suspension.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
The Solicitor General for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Herein special civil action for *certiorari* under Rule 65 of the Rules of Court seeks the nullification of the Resolution[1] dated October 3, 2005 of the *Sandiganbayan* issued in Criminal Case No. 27738 — where Mayor Ramon Y. Talaga, Jr. (petitioner) and the City Councilors are prosecuted for violation of the Anti-Graft and Corrupt Practices Act: Republic Act (R.A.) No. 3019, as amended.

The assailed Resolution ordered petitioner's preventive suspension for ninety (90) days in accordance with Section 13 of R.A. No. 3019.

The facts of the case:

Criminal and administrative complaints were filed by Elan Recreation, Inc. (ELAN) against petitioner with the Office of the Ombudsman. The complaints alleged that petitioner, in his capacity as mayor of the City of Lucena, had unlawfully granted favors to a third party with respect to the operation of bingo games in the city, to the damage and prejudice of the complainants.[2]

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[1] Penned by Associate Justice Rodolfo A. Ponferrada with the concurrence of Associate Justice Gregory S. Ong (Chairman) and Associate Justice Jose R. Hernandez; *rollo*, pp. 45-58.

[2] *Rollo*, p. 310.

On May 23, 2003, the Office of the Deputy Ombudsman for Luzon recommended the dismissal of both the criminal and administrative complaints.[3] However, the Ombudsman approved the dismissal of the administrative case but denied the dismissal of the criminal case.

As a result, the Office of the Special Prosecutor recommended the filing of three criminal charges for violation of R.A. No. 3019:

1. Criminal Case No. 27737. For causing undue injury to complainants when petitioner as mayor of Lucena City vetoed an ordinance granting a local franchise to the complainants to operate bingo games in the city;

2. **Criminal Case No. 27738. For giving unwarranted benefits to Jose Sy Bang by approving an ordinance granting to Sy Bang a local franchise to operate bingo games in the city**; and

3. Criminal Case No. 27739. For causing undue injury to complainants when petitioner closed down their bingo operations temporarily. (Emphasis supplied)

Petitioner filed a motion for reconsideration/reinvestigation[4] questioning the finding of the Special Prosecutor. The Motion for Reconsideration was denied by the Office of the Ombudsman.

On May 17, 2003, petitioner filed a motion to quash the three informations.[5] On February 9, 2004, the *Sandinganbayan* issued a Resolution[6] quashing the Informations in Criminal Cases No. 27737 and 27739. However, it sustained the Information in Criminal Case No. 27738. In the said Resolution, respondent referred Criminal Case No. 27738 back to the Office of the Ombudsman and ordered the latter to conduct further preliminary investigation to determine the possible liability of the members of the City Council which passed Ordinance No. 1963 in said case.[7]

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[3] *Id.* at 59-69, 71-82.

[4] *Id.* at 83-108.

[5] *Id.* at 311.

[6] *Id.* at 137-147.

[7] *Rollo*, p. 383.

An Amended Information[8] and Second Amended Information[9] were filed by the prosecution in the *Sandiganbayan*. The first included the members of the City Council of Lucena City (City Councilors), as additional accused, while the Second Amended Information (Information) alleged conspiracy between petitioner and the City Councilors. Over the opposition[10] of petitioner, the *Sandiganbayan* admitted both amended informations.[11]

On February 21, 2005, petitioner and the City Councilors filed a Motion to Quash[12] the Information on the ground that there is no valid information on which the *Sandiganbayan* has a finding of probable cause because the second amended information's allegations do not constitute an offense, there being no violation of Presidential Decree (P.D.) No. 771 as it has no applicability to bingo operations and P.D. No. 771 has been superceded by P.D. No. 1869 and R.A. No 7160. The *Sandiganbayan* denied[13] the petition and it likewise denied petitioner's Motion for Reconsideration.[14]

On June 29, 2005, petitioner and the City Councilors were arraigned in Criminal Case No. 27738 and all pleaded "not guilty".

On July 5, 2005, the prosecution filed a Motion to Suspend the Accused *Pendente Lite*.[15] Petitioner and his co-accused filed an Opposition[16] to the motion. Thereafter, respondent ordered the suspension of the petitioner and his co-accused, to wit:

x x x x x x x x x

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[8] *Id.* at 166-168.

[9] *Id.* at 169-171.

[10] *Id.* at 172-193.

[11] *Id.* at 194-195.

[12] *Id.* at 196-209.

[13] *Id.* at 217-225.

[14] *Id.* at 226-229.

[15] *Rollo*, pp. 240-244.

[16] *Id.* at 245-249.

WHEREFORE, the prosecution's motion for suspension *pendente lite* is hereby GRANTED, and accused Ramon Y. Talaga, Jr., Godofredo V. Faller, Danilo R. Zaballero, Salome S. Dato, Simon N. Aldovino, Wilfredo F. Asilo, and Aurora C. Garcia are hereby directed to CEASE and DESIST from further performing and/or exercising the functions, duties, and privileges of their positions as City Mayor, and City Councilors of Lucena City, respectively, or any other positions they may now or hereafter be holding effective immediately upon receipt hereof and continuing for a total period of ninety (90) days.[17]

Petitioner then filed the present petition for *certiorari* with an urgent application for the issuance of a temporary restraining order and/or preliminary injunction under Rule 65 of the Rules of Court. The Court issued a Temporary Restraining Order on November 9, 2005 enjoining public respondents from implementing the suspension of petitioner.[18]

Assailing his suspension, petitioner alleges:

I

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IN ABDICATION OF ITS CONSTITUTIONAL DUTY TO RESOLVE A JUDICIAL CONTROVERSY, IT IS MINISTERIAL DUTY TO ISSUE A PREVENTIVE SUSPENSION ORDER AGAINST THE PETITIONER AND THERE ARE NO IFS AND BUTS ABOUT IT.

II

ASSUMING THAT THE ISSUANCE OF THE PREVENTIVE SUSPENSION IS MANDATORY, THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT ORDERED THE SUSPENSION OF THE PETITIONER AS SECTION 13 OF REPUBLIC ACT NO. 3019, WHICH FORMS THE BASIS OF THE ORDER OF SUSPENSION, IS UNCONSTITUTIONAL ON THE GROUND THAT IT IMPINGES UPON THE EXCLUSIVE PREROGATIVE OF THE JUDICIARY.

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[17] *Id.* at 57.

[18] *Id.* at 250.

III

THE HONORABLE SANDIGANBAYAN COMMITED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ORDERED THE SUSPENSION OF HEREIN PETITIONER DESPITE THE FACT THAT THERE EXISTS NO VALID INFORMATION UNDER WHICH PETITIONER STANDS CHARGED.[19]

The petition is devoid of merit.

Petitioner argues that respondent committed grave abuse of discretion when in imposing the sanction of suspension, it only relied on the "mandatory" provision of Section 13 insensate to the weight and cogency of the peculiar circumstances of the case before it.[20] Moreover, petitioner argues that the bare reliance of respondent on Section 13 without calibrating the weight of diverse and dueling evidence pertinent to the issue of appropriateness of ordering his suspension is a clear abdication of respondent's constitutional duty to exercise its judicial function.[21] In addition, petitioner contends that respondent should have looked into the "environmental circumstances" of the case and thus it was unwarranted to apply the presumption in *Bolastig v. Sandiganbayan*[22] that unless the accused is suspended, he may frustrate or commit further acts of malfeasance or do both.

Petitioner asks this Court to first look into the circumstances of the case and thereafter determine the propriety of issuing a suspension order. The Court could not be more explicit than its ruling in *Segovia v. Sandiganbayan,*[23] thus:

> Petitioners would now have this Court strike down these resolutions because supposedly rendered in excess of jurisdiction or with grave abuse of discretion. The Court will not do so. In no sense may the challenged resolutions be stigmatized as so clearly capricious,

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[19] *Rollo*, pp. 14-15.

[20] *Id.* at 17.

[21] *Id.*

[22] G.R. No. 110503, August 4, 1994, 235 SCRA 103.

[23] G.R. No. 124067, March 27, 1998, 288 SCRA 328.

whimsical, oppressive, egregiously erroneous or wanting in logic as to call for invalidation by the extraordinary writ of *certiorari*. On the contrary, in promulgating those resolutions, the Sandiganbayan did but adhere to the clear command of the law and what it calls a "mass of jurisprudence" emanating from this Court, sustaining its authority to decree suspension of public officials and employees indicted before it. **Indeed that the theory of "discretionary suspension" should still be advocated at this late date, despite the "mass of jurisprudence" relevant to the issue, is little short of amazing, bordering on contumacious disregard of the solemn magisterial pronouncements of the Highest Court of the land**.[24]

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While petitioners concede that this Court has "almost consistently ruled that the preventive suspension contemplated in Section 13 of RA 3019 is mandatory in character," they nonetheless urge the Court to consider their case an exception because of the "peculiar circumstances" thereof. They assert that the evils sought to be avoided by "separating a public official from the scene of his alleged misfeasance while the same is being investigated" — *e.g.*, "to preclude the abuse of the prerogative of (his) office, such as through intimidation of witnesses,"or the tampering with documentary evidence — will not occur in the present situation where:

1. The Project has been canceled.
2. (Their) *** official duties no longer pertain, in any manner, to the prequalification of contractors dealing with NPC. Neither are they now involved in any bidding for or awarding of contracts, *** it (being) emphasized (in this connection) that they were merely designated as *ad hoc* members of the Committee without additional compensation for their additional duties.
3. All the relevant documentary evidence had been either submitted to the Ombudsman or to the Honorable Sandiganbayan.

They conclude that their preventive suspension "at this point would actually be purposeless, as there is no more need for precautionary measures against their abuse of the prerogatives of their office."

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[24] *Segovia v. Sandiganbayan*, *supra* note 23, at 336.

The arguments are not new. They have been advanced and rejected in earlier cases. They will again be so rejected in this case.

The Court's pronouncements in *Bolastig v. Sandiganbayan*, are germane:

> x x x The fact is that the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution is just one of the grounds for preventive suspension. The other one is**, to prevent the accused from committing further acts of malfeasance while in office**.[25] (Emphasis supplied)

Ineluctably, the theory of petitioner that "environmental circumstances" of the case should first be explored has no leg to stand on.

Section 13, R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, provides:

> *Suspension and loss of benefits*. — Any public officer against whom any criminal prosecution **under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office**. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him. (Emphasis supplied)

In *Beroña v. Sandiganbayan*,[26] the Court explicitly ruled:

> Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under R.A. 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. This Court has repeatedly held that such preventive suspension is mandatory, and there are no "ifs" and "buts" about it.

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[25] *Id.* at 340-341.

[26] G.R. No. 142456, July 27, 2004, 435 SCRA 303.

As early as *Luciano v. Mariano*,[27] the Court has set out the guidelines to be followed by the lower courts in the exercise of the power of suspension, to wit:

x x x x x x x x x

(c) By way of broad guidelines for the lower courts in the exercise of the power of suspension from office of public officers charged under a valid information under the provisions of Republic Act No. 3019 or under the provisions of the Revised Penal Code on bribery, pursuant to Section 13 of said Act, it may be briefly stated that upon the filing of such information, the trial court should issue an order with proper notice requiring the accused officer to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to the cited mandatory provisions of the Act. **Where either the prosecution seasonably files a motion for an order of suspension or the accused in turn files a motion to quash the information or challenges the validity thereof, such show-cause order of the trial court would no longer be necessary. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order of suspension should it uphold the validity of the information or withhold such suspension in the contrary case.**

(d) No specific rules need be laid down for such pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him, *e.g.*, that he has not been afforded the right of due preliminary investigation, the act for which he stands charged do not constitute a violation of the provisions of Republic Act No. 3019 or of bribery provisions of the Revised Penal Code which would warrant his mandatory suspension from office under Section 13 of the Act, or he may present a motion to quash the information on any of the grounds provided in the Rule 117 of the Rules of Court. The mandatory suspension decreed by the act upon determination of the pendency in court or criminal prosecution for violation of the Anti-Graft Act or for bribery under a valid information requires at the same time that the hearing be expeditious, and not unduly protracted such as to thwart the prompt suspension envisioned by the Act. Hence, if the trial court, say, finds the ground alleged in the quashal motion

[27] No. L-32950, July 30, 1971, 40 SCRA 187.

not to be indubitable, then it shall be called upon to issue the suspension order upon its upholding the validity of the information and setting the same for trial on the merits.[28] (Emphasis and underscoring supplied)

Stated differently, the purpose of the law in requiring a pre-suspension hearing is to determine the validity of the information so that the court can have a basis to either suspend the accused and proceed with the trial on the merits of the case, or withhold the suspension and dismiss the case, or correct any part of the proceedings that impairs its validity. That hearing is similar to a challenge to the validity of the information by way of a motion to quash.[29] In this case, respondent had determined the validity of the Information when petitioner filed his Motion to Quash. The hearings or proceedings held thereon, in effect, constituted a pre-suspension hearing. Respondent has followed the dictates of the law.

This brings the Court to petitioner's third assigned error that there is no valid Information under which petitioner stands charged.

In effect, petitioner is stating once again that the allegations in the Information do not constitute an offense. Petitioner is holding on to a thin straw in claiming that the Information is fatally defective since it failed to allege that petitioner by enacting and approving Ordinance No. 1963 had "caused injury to any party, whether the government or private party," an essential element in the crime charged.

The Information reads:

That on or about June 5, 2000, or sometime prior or subsequent thereto, in Lucena City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused RAMON TALAGA, JR., being the City Mayor of Lucena, Quezon and GODOFREDO V. FALLER, VICTOR U. PAULO, DANILO R. ZABALLERO, SALOME S. DATO, SIMON N. ALDOVINO, WILFREDO F. ASILO, PHILIP M. CASTILLO, AURORA C. GARCIA, ROMANO FRANCO C.

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[28] *Luciano v. Mariano, supra* note 27, at 202-203.

[29] *Socrates v. Sandiganbayan*, 324 Phil. 151 (1996).

TALAGA, being members of the City Council of Lucena City, while in the performance of their official and/or administrative functions, committing the offense in relation to their office, did then and there willfully, unlawfully, and criminally, with evident bad faith and/or manifest partiality, conspiring, confederating and mutually helping such other, **give unwarranted benefit to Jose Sy Bang of Lucena City, by then and there, in conspiracy with each other, by enacting and approving Ordinance No. 1963, series of 2000 dated June 5, 2000 granting unto the said Jose Sy Bang a local franchise to operate a bingo business in Lucena City in violation of Presidential decree No. 771**. (Emphasis supplied)

Section 3(e) of R.A. No. 3019, under which petitioner is charged, provides:

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

x x x x x x x x x

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

Contrary to the argument of petitioner, the law does not require that the information must allege that the acts in question "caused injury to any party, whether the government or private party." The presence of the word "or" clearly shows that there are two acts which can be prosecuted under Section 3: First, causing any undue injury to any party, including the government, and, Second, giving any private party any unwarranted benefits, advantages or preference. Moreover, in *Quibal v. Sandiganbayan*,[30] the Court ruled that violation of Section 3 (e) of R.A. No. 3019 requires proof of the following facts:

[30] G.R. No. 109991, May 22, 1995, 244 SCRA 224.

xxx xxx xxx

1. His action caused undue injury to the Government or any private party, **or gave any party any unwarranted benefit, advantage or preference to such parties.**[31]

Section 9, Rule 110, Rules of Court provides the guideline for the determination of the validity or sufficiency of allegations in an information, to wit:

SECTION 9. *Cause of the Accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be **stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged** as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (Emphasis supplied)

The test is whether the crime is described in intelligible terms with such particularity as to appraise the accused, with reasonable certainty, of the offense charged. The *raison d'etre* of the rule is to enable the accused to suitably prepare his defense.[32]

Based on the foregoing test, the Information sufficiently apprises petitioner of the charges against him. The Information charged the petitioner of evident bad faith and manifest partiality when as Mayor of Lucena City, petitioner, in conspiracy with the City Council, gave unwarranted benefits to Jose Sy Bang. Moreover, it states the specific act which constituted the giving of unwarranted benefits, namely, granting unto the said Jose Sy Bang a local franchise to operate a bingo business in Lucena City in violation of existing laws. These allegations are clear enough for a layman to understand.

Finally, petitioner's second assigned error deserves scant consideration. The validity of Section 13, R.A. No. 3019 may no longer be put at issue, the same having been repeatedly

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[31] *Quibal v. Sandiganbayan, supra* note 30, at 231.

[32] *Matilde, Jr. v. Jabson,* No. L-38392, December 29, 1975, 68 SCRA 456.

upheld by this Court.[33] Basic is the rule that every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.[34]

The Anti-Graft and Corrupt Practices Act implicitly recognizes that the power of preventive suspension lies in the court in which the criminal charge is filed; once a case is filed in court, all other acts connected with the discharge of court functions — including preventive suspension — should be acknowledged as within the competence of the court that has taken cognizance thereof, no violation of the doctrine of separation of powers being perceivable in that acknowledgement.[35] As earlier mentioned, the court must first determine the validity of the information through a pre-suspension hearing. But once a proper determination of the validity of the information has been made, it becomes the ministerial duty of the court to forthwith issue the order of preventive suspension.[36]

WHEREFORE, the instant petition is *DISMISSED***,** there being no showing that the *Sandiganbayan* gravely abused its discretion in issuing its Resolution of October 3, 2005, preventively suspending the petitioner for ninety (90) days. The Temporary Restraining Order dated November 9, 2005 is lifted.

SO ORDERED.

Carpio,[*] *Corona,*[**] *Azcuna,*[***] and *Nachura, JJ.,* concur.

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[33] *Segovia v. Sandiganbayan*, *supra* note 23, at 336.

[34] *La Bugal-Balaan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, January 27, 2004, 421 SCRA 148, 247.

[35] *Segovia v. Sandiganbayan*, *supra* note 23, at 337.

[36] *La Bugal-Balaan Tribal Association, Inc. v. Ramos*, *supra* note 34, at 177.

[*] In lieu of Justice Consuelo Ynares-Santiago, per Raffle dated October 13, 2008.

[**] In lieu of Justice Minita V. Chico-Nazario, per Raffle dated October 13, 2008.

[***] In lieu of Justice Ruben T. Reyes, per Special Order No. 521.

SECOND DIVISION

[G.R. No. 174641. November 11, 2008]

NATIONAL MINES and ALLIED WORKERS UNION (NAMAWU), *petitioner, vs.* **MARCOPPER MINING CORPORATION,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; "NO WORK, NO PAY" RULE, APPLICABLE IN CASE AT BAR. — We find from the pleadings filed that the environmental incident that gave rise to NAMAWU's April 1996 complaint to be undisputed; MARCOPPER caused the spillage of mine waste and tailings into the Boac River. Neither is it disputed that the company had to suspend its operations by order of the DENR, and that the company's indefinite cessation of operations lasted beyond the 6-month temporary suspension of operations that Article 286 of the Labor Code allows. All that remains is the determination of the employees' rights under the circumstances. The suspension of MARCOPPER's operations was decreed in an *Ex-Parte* Order dated April 1, 1996 issued by the Pollution Adjudication Board of the DENR pursuant to Presidential Decree (*P.D.*) No. 984 and Section 36 of its Implementing Rules. The dispositive portion of this order provides: "WHEREFORE, in view of the foregoing, the Board on consultation hereby orders the respondent to cease and desist from undertaking any activity and/or operating its machines/equipment generating pollution until the respondent prevents or abates its pollution within allowable standards." This Order shall be IMMEDIATELY EXECUTORY and shall remain in force until modified or nullified by the Board. Separately from this Order, the DENR Secretary ordered on June 21, 1996 the cancellation of MARCOPPER's ECC without which MARCOPPER could not continue to undertake its mining operations. Thus, as of that date (June 21, 1996), the temporary suspension of operations that started on April 12, 1996 became permanent so that MARCOPPER did not have to wait for the end of the six-month suspension of operations before the services of the three employees were deemed terminated. In

Labor Code terms, the cancellation of the ECC on June 21, 1996 amounted to a company closure governed by Article 283 of the Labor Code — the provision that governs the relationship of employers and employees in closure situations. The rule that NAMAWU cites in its claim for wages is Rule X, Book III, Section 3(b) of the Rules and Regulations implementing the Labor Code. This rule, however, specifically relates to *suspension of operations due to health and safety concerns.* x x x While the mine tailing leakage and pollution of the Boac River cannot but affect the health and safety of those in the MARCOPPER vicinity, particularly its employees, we find that the Department of Labor and Employment (*DOLE*) Regional Director — at whose initiative a suspension of operation must originate for the x x x provision to apply — did not act as envisioned by the above rule. Specifically, there was no ruling or directive from the DOLE that the environmental incident was a workplace health and safety concern that required a suspension of operation. There is likewise nothing in the laws applicable to pollution, specifically, P.D. No. 984 and P.D. No. 1586 and their implementing rules, that speak of the consequences of a DENR-ordered suspension of operations on employment relationships. Neither does the CBA between MARCOPPER and NAMAWU provide for the consequences of a suspension of operation due to environmental causes. *Under the circumstances, we can only conclude that the general "no work, no pay" rule should prevail with respect to employees' wages during the suspension period, subject to existing CBA terms on leave credits and similar benefits of employees.*

APPEARANCES OF COUNSEL

Padilla & Associates Law Office for petitioner.
Quasha Ancheta Peña & Nolasco for respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the petition for review on *certiorari*[1] filed by petitioner National Mines and Allied Workers Union (*NAMAWU*) to annul and set aside the decision of the Court of Appeals (*CA*) in CA-G.R. No. 70875[2] and its subsequent order denying the petitioner's motion for reconsideration.[3] The CA decision nullified the resolution[4] and the order[5] of the National Labor Relations Commission (*NLRC*) denying the appeal filed by Marcopper Mining Corporation (*MARCOPPER*), and ordered the NLRC to give due course to MARCOPPER's appeal.

THE FACTUAL BACKGROUND

On April 1, 1996, the Department of Environment and Natural Resources (*DENR*) ordered the indefinite suspension of MARCOPPER's operations for causing damage to the environment of the Province of Marinduque by spilling the company's mine waste or tailings from an old underground impounding area into the Boac River, in violation of its Environmental Compliance Certificate (*ECC*).[6]

NAMAWU was the exclusive bargaining representative of the rank-and-file workers of MARCOPPER. On April 10, 1996, it filed a complaint with the Regional Arbitration Branch No. IV of the NLRC against MARCOPPER for nonpayment of wages, separation pay, damages, and attorney's fees; the case is hereinafter referred to as the *"environmental incident case."*[7]

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 3-15.

[2] Promulgated on October 14, 2004; *id.*, pp. 22-34.

[3] Promulgated on September 8, 2006; *id.*, pp. 37-40.

[4] Dated February 28, 2002; *id.*, pp. 193-197.

[5] Dated April 16, 2002; cited in CA decision; *id.*, p. 22.

[6] *Id.*, pp. 152-154.

[7] NLRC Case No. RAB IV-4-8018-96-M.

NAMAWU claimed that due to the indefinite suspension of MARCOPPER's operations, its members were not paid the wages due them for six months (from April 12, 1996 to October 12, 1996) under Rule X, Book III, Section 3(b) of the Implementing Rules and Regulations of the Labor Code.[8] It further claimed that its members are also entitled to be paid their separation pay pursuant to their collective bargaining agreement with MARCOPPER and pursuant to Book IV, Rule I, 4(b) of the Labor Code's implementing rules.

MARCOPPER denied liability, contending that NAMAWU had not been authorized by the individual employees — the real parties-in-interest — to file the complaint; and that the complaint should be dismissed for lack of certification of non-forum shopping, for the pendency of another action between the same parties, and for lack of factual and legal basis.[9]

Labor Arbiter Pedro C. Ramos ruled in NAMAWU's favor in a decision dated March 14, 2000.[10] He ordered MARCOPPER, John Loney and Steve Reed (President and General Manager of the company, respectively) to pay jointly and severally the rank-and-file workers represented by NAMAWU and other employees similarly situated, the following claims: their wages for the suspension of operation for the period April 12, 1996 to October 12, 1996; separation pay; and attorney's fees. The wages and separation pay amounted to forty-four million six hundred twenty-two thousand eight hundred seventy-one and 02/100 pesos (₱44,622,871.02), while the attorney's fees

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[8] x x x

Within 24 hours from the issuance of the order of stoppage or suspension, a hearing shall be conducted to determine whether the order for the stoppage of work or suspension of operation shall be lifted or not. The proceedings shall be terminated within seventy-two (72) hours and a copy of such order or resolution shall be immediately furnished the Secretary of Labor. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries and wages during the period of such stoppage of work or suspension of operations.

[9] NLRC Case No. 106-95.

[10] Annex "M", Petition; *rollo*, pp. 198-211.

amounted to four million four hundred sixty-two thousand two hundred eighty-seven and 10/100 pesos (₱4,462,287.10).

MARCOPPER appealed the decision to the NLRC. In this appeal, it also moved that it be allowed not to post an appeal bond for 615 NAMAWU members — former MARCOPPER employees who had been dismissed effective March 7, 1995 due to an earlier illegal strike. MARCOPPER, however, posted the required bond for three non-striking employees, namely: Apollo V. Saet, Rogelio Regencia and Jose Romasanta.

The NLRC dismissed MARCOPPER's appeal in a Resolution dated February 28, 2002 for its failure to post the appeal bond required by Article 223 of the Labor Code. Loney and Reed were at the same time dropped as respondents in the case.

The NLRC subsequently denied MARCOPPER's motion for reconsideration.[11] MARCOPPER thus sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. **The petition imputed grave abuse of discretion on the NLRC for disregarding an earlier CA decision in CA-G.R. SP No. 51059 (*illegal strike case*) involving the same parties and the same reliefs; and for awarding wages and separation pay to NAMAWU members who had earlier been dismissed and were no longer MARCOPPER employees when MARCOPPER suspended its operations.**

The CA granted MARCOPPER's petition in the currently assailed decision promulgated on October 14, 2004.[12] Accordingly, it nullified the NLRC resolution of February 28, 2002 and the order dated April 16, 2002, and ordered the NLRC to give due course to MARCOPPER's appeal.[13] The CA found the non-filing of the appeal bond for the 615 NAMAWU members covered by the Labor Arbiter's award to be justified since their employment had been terminated as early as March 7, 1995, *i.e.*, prior to the suspension of operations for which wages and separation pay were being claimed.

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[11] Under NLRC Order dated April 16, 2002.

[12] *Supra* note 2, p. 1.

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

The CA noted in the assailed decision that it had previously confirmed the validity of the termination of employment of NAMAWU members in its decision dated May 28, 1999 on the illegal strike case.[14] The CA stressed, too, that NAMAWU elevated the illegal strike case to this Court for review, and that we denied the petition for review in our Resolution of July 12, 2000.[15] Our Resolution was entered in the Book of Entries of Judgment on December 27, 2000.[16]

The CA's denial of NAMAWU's motion for the reconsideration of the CA's October 14, 2004 decision cleared the way for the present petition.

THE PETITION

The petition, which submits four issues for our resolution, boils down to the core issues of whether the CA erred in ruling that there was no need for MARCOPPER to post an appeal bond, and in ordering the NLRC to give due course to MARCOPPER's appeal.[17]

NAMAWU submits that:

First, an appeal is not a constitutional right but a mere statutory privilege; parties who wish to avail of the privilege must comply with the statutes or rules regulating the appeal. It points out that, by law, an appeal may be perfected only upon the posting of a cash or surety bond.[18] No exception is provided nor allowed as the legal intent is to make the bond an indispensable requisite for the perfection of an appeal.

Second, the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance

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[14] Annex "A", Respondent's Comment; *rollo*, pp. 264-284.

[15] G.R. No. 143282.

[16] *Rollo*, pp. 71-72; see also Annex "D", MARCOPPERS's Comment, *id.*, pp. 288-289.

[17] Resolution of the Court granting NAMAWU's Motion to adopt petition as Memorandum; *id.*, p. 307.

[18] LABOR CODE, Article 223.

with the legal requirement renders the judgment final and executory.[19] The bond serves as an assurance to the workers that they would be paid if they finally prevail, as held in *Coral Point Development Corp. v. NLRC*.[20]

Third, the CA delved into the merits of the company's appeal despite the patent lack of a perfected appeal. This happened, the petitioner submits, when the CA took cognizance of its decision in CA-G.R. SP No. 51059 (the *illegal strike case*) where 615 company employees were adjudged to have been terminated for cause effective March 7, 1995. CA-G.R. SP No. 51059 refers to *"an entirely separate and distinct case not connected with the case under consideration"* and it became final and executory only on July 12, 2000 when it was upheld by this Court[21] and when an Entry of Judgment was recorded in the Book of Entries of Judgment.[22] A retroactive application of this ruling would be prejudicial to the workers involved and cannot be done.

Fourth, outside of the 615 employees who were the focus of the assailed CA decision, there were other employees similarly situated who are not covered by the previous illegal strike case (CA-G.R. SP No. 51059) but are covered by the March 14, 2000 decision of Labor Arbiter Ramos. The company's position implies that there were no employees working with the company from the dismissal date of March 7, 1995 to March 24, 1996 when the disaster happened.

Fifth, the CA ignored the fact that the present case involves an issue pertaining to MARCOPPER's violation of safety and health rules which resulted in the loss of jobs of all its workers. This was the reason why the Labor Arbiter ordered MARCOPPER to pay the workers not only separation pay but also unpaid

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[19] *Cabalan Pastulan Nogrito Labor Ass. v. NLRC*, G.R. No. 106108, February 23, 1995, 241 SCRA 643.

[20] G.R. No. 129761, February 28, 2000, 326 SCRA 554.

[21] *Supra* note 15, p. 4.

[22] *Supra* note 16, p. 4.

wages for the duration of the disaster. The decision cited by the CA involved an illegal strike and entailed only separation pay. Even granting that the previous strike case could bar the safety and health case under consideration, still MARCOPPER was under legal obligation to post a bond to perfect its appeal to the NLRC to guarantee the payment of the money claims of workers who were not included in the illegal strike case.

Sixth, in the guise of ruling on the issue of the non-filing of an appeal bond, the CA already decided the case in favor of MARCOPPER. When the CA ordered the NLRC to give due course to MARCOPPER's appeal without an appeal bond, there was nothing more left to be done by the NLRC but to reverse the decision of the Labor Arbiter.

THE CASE FOR THE RESPONDENT

The respondent company and its principal officers presented their case in a Comment[23] filed on January 26, 2007 and a Memorandum[24] submitted on November 22, 2008. They submit that —

1. The CA correctly ruled that there is no necessity for the filing of an appeal bond considering that the employment of petitioner NAMAWU's members was terminated even before the issuance by the DENR of its order on April 1, 1996.[25]

2. There is no pre-judgment of MARCOPPER's appeal with the NLRC; the CA had to consider the member-employees' termination from employment in order to resolve the issue of whether there was a need for the posting of an appeal bond in the present case.

MARCOPPER reiterated that petitioner NAMAWU's members were dismissed from employment on March 7, 1995 for their participation in a strike declared illegal by the NLRC.[26] The

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[23] *Rollo*, pp. 237-263.

[24] *Id.*, pp. 308-335.

[25] *Supra* note 2, p. 1.

[26] NLRC Case No. 106-95.

dismissal was subsequently affirmed by the CA in CA-G.R. SP No. 51059.[27] The CA decision in turn was affirmed by this Court in its Resolution of July 12, 2000 in G.R. No. 143282, which Resolution was entered in the Book of Entries of Judgment on December 27, 2000.

Imputing bad faith on the part of NAMAWU, MARCOPPER decries that despite the pendency of the illegal strike case, NAMAWU filed on April 10, 1996 the present complaint[28] for wages and separation pay arising from the suspension of operations that started on April 12, 1996. It insists that the strike case also considered the separation pay of the NAMAWU members, as expressly recognized in the NLRC decision.[29] It stresses, too, that since the entitlement of NAMAWU members to their money claims had already been resolved and denied in a final and executory judgment, it was unjust to declare the company liable for money claims from April 12, 1996 to October 12, 1996 — a period when the NAMAWU members were no longer MARCOPPER employees.

MARCOPPER points out that it did not deliberately fail to post the required appeal bond. It submits that it filed in good faith a Motion to Dispense with the Filing of an Appeal Bond[30] for the 615 employees, and at the same time posted a bond for three complainants[31] — Apollo V. Saet, Rogelio Regencia, and Jose Romasanta — who were not included in the strike case. It claims that the motion is similar to a Motion to Reduce Bond that the NLRC should have resolved first before it dismissed the appeal.

It expresses disappointment that it was only after close to two years (or on February 28, 2002) that the NLRC rendered

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[27] *Rollo*, pp. 264-283; Decision promulgated on May 28, 1999.

[28] *Supra* note 7, p. 2.

[29] MARCOPPERS's Memorandum, pars. 13 & 14, pp. 15-16; *rollo*, pp. 322-323.

[30] MARCOPPER's Comment, par. 9, p. 5; *id.*, p. 241.

[31] *Id*.

its resolution dismissing the appeal based on the failure to post an appeal bond. Aside from the unusual delay in the NLRC resolution, MARCOPPER finds it odd that the NLRC did not resolve its motion to dispense with the posting of the appeal bond before dismissing the appeal. It points out that the motion should have been resolved in view of the following circumstances: (1) the appealed judgment involved a considerable amount; (2) there was already a decision of the CA in the illegal strike case when the NLRC resolved the environmental incident case; and (3) there was no intention to violate the bond requirement because it posted the necessary bond corresponding to the award in favor of three employees who were not involved in the illegal strike case.

THE RULING OF THE COURT

We state at the outset that we do not agree with NAMAWU's position that the illegal strike case between it and MARCOPPER — CA-G.R. SP No. 51059; later, this Court's G.R. No. 143282, July 12, 2000) — is "an entirely separate and distinct case not connected with the case under consideration." In the first place, both the previous and the present cases are between the same parties — NAMAWU and MARCOPPER. Both cases refer to termination of employment and its consequences. In fact, the payment of separation pay that NAMAWU seeks in the present case was considered by the NLRC in its decision in the illegal strike case, although the award was stricken out by the CA when the illegal strike case was brought to it for review. Thus, the two cases are *intimately intertwined* in the consideration made by the tribunals *a quo* as well as in point of time as our discussions below will show. If they differ at all, the difference lies only in the grounds and circumstances of termination since the illegality of NAMAWU's strike of February 27, 1995 is not under consideration in the present case, having been laid to rest by the final and executory decision of this Court of July 12, 2000.

The employment of the NAMAWU officers and members had been declared terminated on March 7, 1995 as a result of their failure to return to work after their strike of February 27, 1995. Thereafter, the illegal strike litigation commenced, resulting

in a decision by the NLRC on November 11, 1996 declaring the strike illegal. Apart from confirming the termination of the services of the union officers, the NLRC declared:[32]

> However, **We take judicial notice of the fact that due to the environmental incident involving spillage of mine waste and tailings, the Deparment of Environment and Natural Resources ordered the cessation of operation of the Company on April 1, 1996 rendering the workers out of work, which to this time, is already beyond the allowable period of six (6) months temporary suspension of operation under Article 286 of the Labor Code. This being so, said Union members are entitled to separation pay in lieu of reinstatement.**
>
> Let it be stressed that the grant of separation pay shall include all the Union members, the grant of the same being based on their termination of employment by operation of law. The 13 officers of the Union whom we declared to have lost their employment status and the 44 Union members who retired are excluded from the grant of the separation pay. Reduced in figure (sic) there are 562 Union members who are entitled to separation pay.
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> x x x x x x x x x

The environmental incident referred to in this illegal strike ruling is the same environmental incident that gave rise to the present complaint (*In Re: Dispute in Marcopper Mining, NLRC Case No. 106-95*) that NAMAWU filed on April 10, 1996. While the NLRC had not yet ruled on the illegal strike case when the present environmental incident complaint was filed, the Labor Arbiter's ruling on the latter complaint came very much later, in fact long after both the NLRC and the CA had ruled on the illegal strike case. The NLRC denied the motion for reconsideration of its November 11, 1996 decision in the illegal strike case on **June 11, 1997**, while the CA issued its decision on the same case on **May 28, 1999**. The Labor Arbiter issued his decision on the present environmental incident case **only on March 14, 2000**. *Under this sequence of rulings, the Labor Arbiter effectively restored* ***in the environmental incident case***

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[32] Cited in CA decision in CA-G.R. SP No. 70875; *id.*, p. 27.

the same separation pay award that the CA ***struck off from the NLRC decision in the illegal strike case. In effect, the Labor Arbiter disregarded the CA ruling and actually reversed it.***

Similarly interesting, as respondent MARCOPPER alleged in its submissions, is the fact that MARCOPPER's appeal to the NLRC was filed on April 10, 2000. The appeal was supported by a Motion to Dispense with the Filing of an Appeal Bond with respect to 615 NAMAWU members who were former MARCOPPER employees who had been dismissed for participation in an illegal strike. The NLRC did not directly resolve MARCOPPER's motion but simply dismissed the appeal two years later (or **on February 28, 2002**). In relation with this dismissal date, we find it significant that the CA issued its decision declaring the NAMAWU strike illegal and decreeing the dismissal of NAMAWU officers and members **as early as May 28, 1999** in CA G.R. SP No. 51059. Our own Decision on the illegal strike case came **on July 12, 2000** and was entered in the Book of Entries of Judgment **on December 27, 2000**.[33] *Thus, the NLRC was already burdened with knowledge of the final and executory decision of no less than this Court (confirming the March 7, 1995 dismissal of the striking NAMAWU members) when the NLRC issued its decision in the present case dismissing the MARCOPPER appeal for failure to file an appeal bond for the already dismissed workers. Thus, like the Labor Arbiter below, the NLRC in effect sought to negate what a higher tribunal, this Court no less, had already affirmed and confirmed, i.e., the termination of employment of 615 NAMAWU members.*

In the context of the NLRC appeal bond that is directly at issue, MARCOPPER had every reason to claim in its April 10, 2000 appeal to the NLRC that it should be excused from filing an appeal bond with respect to the NAMAWU members who were no longer company employees. The CA decision decreeing the termination of employment of those involved in the illegal strike case had already been issued at that time. We subsequently ruled on the same issue during the time the environmental incident

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[33] *Supra* note 16, p. 4.

case was pending before the NLRC. Thus, when the NLRC dismissed MARCOPPER's appeal for failure to file the requisite appeal bond corresponding to the 615 NAMAWU members, the termination of employment of these NAMAWU members was already a settled matter that the NLRC was in no position to disregard. **In this light, the CA was correct in reversing the dismissal of MARCOPPER's appeal for failure to file an appeal bond. Pursued to its logical end, the CA conclusions should lead to the dismissal of NAMAWU's complaint with respect to its 615 previously dismissed members.**

In contrast with the above, the case of the three other employees — Apollo V. Saet, Rogelio Regencia and Jose Romasanta — who were in MARCOPPER's employ at the time of the suspension of operations on April 12, 1996 and for whom MARCOPPER properly posted an appeal bond before the NLRC — is another matter. We find the CA decision ordering the NLRC to give due course to the MARCOPPER appeal to be correct as the appeal has not in fact been heard and considered; their case, in other words, is still very much alive. The continued viability of their case and the dictates of strict legality require that we now remand the case to the NLRC, as the CA did, for consideration on appeal.

We recognize, however, that their case has now dragged on for more than a decade since its inception on April 10, 1996.[34] As we had done in past similar situations and cases,[35] we deem it the better recourse — in the interest of speedy justice and fair play — to directly resolve their case *at our level* in order to finally settle the dispute once and for all. We therefore proceed now to its consideration.

We find from the pleadings filed that the environmental incident that gave rise to NAMAWU's April 1996 complaint to be undisputed; MARCOPPER caused the spillage of mine waste

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[34] *Supra* note 7, p. 2.

[35] See: *Ong v. Mazo*, G.R. No. 145542, June 5, 2004, 431 SCRA 56; *Jimenez v. CA*, G.R. No. 144449, March 23, 2006, 485 SCRA 149; *Crisostomo v. Garcia*, G.R. No. 164787, January 31, 2006, 481 SCRA 402.

and tailings into the Boac River.[36] Neither is it disputed that the company had to suspend its operations by order of the DENR,[37] and that the company's indefinite cessation of operations lasted beyond the 6-month temporary suspension of operations that Article 286 of the Labor Code allows.[38] All that remains is the determination of the employees' rights under the circumstances.

The suspension of MARCOPPER's operations was decreed in an *Ex-Parte* Order dated April 1, 1996 issued by the Pollution Adjudication Board of the DENR pursuant to Presidential Decree (*P.D.*) No. 984 and Section 36 of its Implementing Rules.[39] The dispositive portion of this order provides:

> WHEREFORE, in view of the foregoing, the Board on consultation hereby orders the respondent to cease and desist from undertaking any activity and/or operating its machines/equipment generating pollution until the respondent prevents or abates its pollution within allowable standards.
>
> This Order shall be IMMEDIATELY EXECUTORY and shall remain in force until modified or nullified by the Board.

Separately from this Order, the DENR Secretary ordered on June 21, 1996 the cancellation of MARCOPPER's ECC without which MARCOPPER could not continue to undertake its mining operations.[40] Thus, as of that date (June 21, 1996), the temporary suspension of operations that started on April 12, 1996 became permanent so that MARCOPPER did not have to wait for the end of the six-month suspension of operations before the services of the three employees were deemed terminated. In Labor Code terms, the cancellation of the ECC on June 21, 1996 amounted to a company closure governed by Article 283 of the Labor

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[36] *Supra* note 6, p. 2.

[37] *Id*.

[38] *Supra* note 32, p. 9.

[39] *Supra* note 6, p. 2.

[40] In Re: Cancellation of the Environmental Compliance Certificate of Marcopper Mining Corporation.

Code — the provision that governs the relationship of employers and employees in closure situations.

The rule that NAMAWU cites in its claim for wages is Rule X, Book III, Section 3(b) of the Rules and Regulations implementing the Labor Code.[41] This rule, however, specifically relates to *suspension of operations due to health and safety concerns*. It states:

> Enforcement power on health and safety of workers. — (a) The Regional Director may likewise order stoppage of work or suspension of operation of any unit or department of an establishment when non-compliance with the law, safety order or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace. (b) x x x In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

While the mine tailing leakage and pollution of the Boac River cannot but affect the health and safety of those in the MARCOPPER vicinity, particularly its employees, we find that the Department of Labor and Employment (*DOLE*) Regional Director — at whose initiative a suspension of operation must originate for the above-quoted provision to apply — did not act as envisioned by the above rule. Specifically, there was no ruling or directive from the DOLE that the environmental incident was a workplace health and safety concern that required a suspension of operation. There is likewise nothing in the laws applicable to pollution, specifically, P.D. No. 984 and P.D. No. 1586 and their implementing rules, that speak of the consequences of a DENR-ordered suspension of operations on employment relationships. Neither does the CBA between MARCOPPER and NAMAWU provide for the consequences of a suspension of operation due to environmental causes. *Under the circumstances, we can only conclude that the general "no work, no pay" rule should prevail with respect to employees' wages during the suspension period, subject to existing CBA terms on leave credits and similar benefits of employees.*

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[41] *Supra* note 8, p. 2.

Because the initial suspension of operations that the DENR imposed eventually turned into an involuntary closure as discussed above, Article 283 of the Labor Code comes into play entitling the three remaining employees the payment of separation pay computed under the terms of that Article. The termination of employment date, for separation pay purposes, should be computed from June 21, 1996 and not from October 12, 1996 (or six months from the April 12, 1996 suspension of operation date); June 21, 1996 must be the closure date as it is from this date that MARCOPPER, by law, ceased to have any authority to conduct its mining operations.

In the absence of any showing that NAMAWU could represent "other similarly situated employees" who are not its members, we cannot consider these other employees (whose circumstances have never been discussed and who all remain unnamed) to be covered by the terms of this Decision.

WHEREFORE, premises considered, we hereby *PARTIALLY GRANT* NAMAWU's petition with respect to the payment of separation pay to Apollo V. Saet, Rogelio Regencia and Jose Romasanta. MARCOPPER is hereby *ORDERED to PAY* them separation pay pursuant to Article 283 of the Labor Code. The claim under the petition for the payment of wages during the suspension of operation period is hereby *DENIED* for lack of merit.

We hereby *DISMISS* the petition with respect to the remaining 615 NAMAWU members who were no longer MARCOPPER employees at the time MARCOPPER suspended its operations in April 1996.

No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 182374. November 11, 2008]

JEREMIAS V. ESTEVES, *petitioner, vs.* **RENE V. SARMIENTO, NICODEMO T. FERRER, in their respective capacities as Presiding Officer and Member of the Second Division COMELEC, Manila and REYNALDO TEH BITONG,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; THE FILING OF A MOTION FOR RECONSIDERATION OF THE RESOLUTION OF THE DIVISION TO THE COMELEC *EN BANC* IS MANDATORY AND JURISDICTIONAL IN INVOKING THE POWER OF REVIEW OF THE SUPREME COURT. — [T]he requirement that an aggrieved party must first file a motion for reconsideration of a resolution of the Division to the COMELEC *en banc* is mandatory and jurisdictional in invoking the power of review of the Supreme Court. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition. All election cases, including pre-proclamation controversies, shall be decided by the COMELEC in division, and the motion for reconsideration shall be decided by the COMELEC *en banc*. As held in *Ambil v. Commission on Elections*, the power of review of the Supreme Court of the rulings of the COMELEC is limited only to the final decision or resolution of the COMELEC *en banc* and not the final resolution of its Division. The Supreme Court has no power to review, *via certiorari*, an interlocutory order or even a final resolution of a Division of the Commission on Elections. Moreover, pursuant to Section 5 (c), Rule 3 of the COMELEC Rules of Procedure, a resolution issued by a Division of the COMELEC must first be elevated to the COMELEC *en banc* by filing a motion for reconsideration.

2. ID.; ID.; ID.; ID.; ID.; RATIONALE. — The filing of a motion for reconsideration is mandatory because the mode by which a decision, order or ruling of the COMELEC *en banc* may be

elevated to the Supreme Court is by the special civil action of *certiorari* under Rule 64 of the Rules of Civil Procedure. It is settled that the filing of a motion for reconsideration of the order, resolution or decision of the tribunal, board or office is, subject to well-recognized exceptions, a condition *sine qua non* to the institution of a special civil action for *certiorari*. The rationale therefore is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AVAILABLE. — [*C*]*ertiorari* will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. *Certiorari* cannot be resorted to as a shield from the adverse consequences of petitioner's own omission to file the required motion for reconsideration. A litigant should first exhaust the administrative remedies provided by law before seeking judicial intervention in order to give the administrative agency an opportunity to decide correctly the matter and prevent unnecessary and premature resort to the court. The premature invocation of judicial intervention is fatal to one's cause of action.

APPEARANCES OF COUNSEL

Rustico B. Gagate for petitioner.
The Solicitor General for public respondents.
Delfin R. Lopez for private respondent.

D E C I S I O N

TINGA, *J.*:

This is a special civil action for *certiorari* and prohibition[1] under Rule 65 of the 1997 Rules of Civil Procedure, assailing the Resolution[2]

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[1] *Rollo,* pp. 3-20.

[2] Dated 29 February 2008; signed by Commissioner Nicodemo T. Ferrer with Presiding Commissioner Rene V. Sarmiento, dissenting; *id.* at 21-29.

of the Second Division of the Commission on Elections (COMELEC) in SPR No. 46-2007. Said resolution set aside the Order[3] dated 8 September 2007 issued by the Regional Trial Court (RTC), Branch 96, Baler, Aurora and consequently dismissed the election protest filed by herein petitioner Jeremias V. Esteves against private respondent Mayor Reynaldo Teh Bitong.

As culled from the records of the case, the following antecedent facts appear:

In the national and local elections conducted last 14 May 2007, petitioner and private respondent both ran for the position of municipal mayor of the Municipality of Casiguran, Aurora. On 15 May 2007, the Municipal Board of Canvassers proclaimed private respondent as the duly-elected Mayor of Casiguran on the basis of the results of the canvassing, which showed him having garnered 3,342 votes or with a margin of 48 votes over petitioner, who obtained 3,294 votes.[4]

On 25 May 2007, petitioner filed an election protest before the Regional Trial Court of Baler, Aurora. The protest was docketed as Election Protest Case (EPC) No. 99 and raffled to Branch 96 presided by Judge Corazon D. Soluren.[5]

The RTC then issued a precautionary protection order directing the Municipal Treasurer and Election Officer of Casiguran to take immediate steps to safeguard the integrity of all the ballot boxes, lists of voters and other paraphernalia used in the elections and thereafter directed that all the election paraphernalia, including the ballot boxes and lists of voters, subject of the protest be brought before the court.[6]

Private respondent then filed an answer, which the RTC admitted in an Order dated 2 August 2007. In the same order, the RTC denied the motion for reconsideration of the dismissal

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[3] *Id.* at 79-80.

[4] *Id.* at 22.

[5] *Id.*

[6] *Rollo*, p. 22.

of private respondent's counter-protest on the ground of non-payment of filing fee. Thereafter, the RTC ordered the creation of the revision committees.[7]

On 6 September 2007, private respondent filed a motion to dismiss the election protest, arguing that it was defective in form and substance as it did not specify the precincts where fraud and irregularities were committed. On 8 September 2007, the RTC issued the order denying private respondent's motion to dismiss for lack of merit.[8]

Thus, private respondent filed before the COMELEC a petition for *certiorari* and prohibition with application for temporary restraining order (TRO) and/or writ of preliminary injunction.[9] The petition sought to nullify the RTC Order dated 8 September 2007 denying private respondent's motion to dismiss. It also prayed that the election protest filed by petitioner be dismissed and the proceedings thereon enjoined on the ground that the election protest failed to comply with the requirements of Section 11(f), Rule 2[10] of A.M. No. 07-4-15-SC. Petitioner filed an answer on 5 December 2007.

After hearing private respondent's application, the COMELEC (Second Division) issued a temporary restraining order (TRO) on 06 December 2007, which directed Judge Soluren to desist from further proceeding with Election Protest Case No. 96 until further orders from the COMELEC.[11]

Thereafter, petitioner filed before this Court a special civil action for *certiorari* and prohibition with application for issuance

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

[8] *Id.* at 23.

[9] *Id.* at 51-78.

[10] SUPREME COURT A.M. No. 07-4-15-SC (2007), Rule 2, Section 11. *Contents of the Protest or Petition.* — An election protest or petition for *quo warranto* shall specifically state the following facts: x x x

(f) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.

[11] *Rollo,* pp. 81-82.

of a temporary restraining order and/or writ of preliminary injunction. The petition, docketed as G.R. No. 180792, prayed that a temporary restraining order be issued enjoining the COMELEC (Second Division) from taking cognizance of SPR Case No. 46-2007 and that the TRO issued by the COMELEC be ordered lifted.

On 15 January 2008, the Court resolved to dismiss G.R. No. 180792 for failure of the petition to state the material dates showing that the petition was filed on time, failure to submit the required competent proof of identity in the verification/ certification, failure to give an explanation why service was not personally made and failure to show that any grave abuse of discretion was committed by the COMELEC in rendering the challenged order.

On 29 February 2008, the COMELEC (Second Division) issued the assailed resolution penned by Commissioner Nicodemo T. Ferrer. The assailed resolution nullified the 8 September 2007 Order of the RTC and, accordingly, dismissed EPC No. 99.[12] The other member of the Second Division, Commissioner Rene V. Sarmiento, wrote a dissenting opinion.[13] It appears that before the issuance of the assailed resolution, the third member of the Second Division, Presiding Commissioner Florentino A. Tuazon, Jr. had retired from the service.

Hence, the instant petition, raising the following arguments: (1) the COMELEC (Second Division) has no jurisdiction to entertain special relief cases like petitions for *certiorari*, prohibition or *mandamus*; (2) the challenged resolution did not comply with the constitutional requirement that it must be decided by a majority vote of all the members; and (3) the challenged resolution negated the spirit and very purpose of A.M. No. 07-4-15-SC.

The Office of the Solicitor General (OSG) manifested that under Section 5, Rule 65 of the Rules of Court, only the private respondent is required to appear and defend the case, both on

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[12] *Rollo*, p. 21.

[13] *Id.* at 90.

his own behalf and on behalf of the public respondent COMELEC, and prayed that the COMELEC be excused from filing the required comment.[14] In a Resolution dated 12 August 2008, the Court granted the motion of the OSG.[15]

The petition deserves dismissal.

Section 3, Article IX-C of the Constitution expressly states:

> SECTION 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

Also, Section 7, Article IX-A of the Constitution provides:

> SECTION 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

Under the aforequoted constitutional provisions, the requirement that an aggrieved party must first file a motion for reconsideration of a resolution of the Division to the COMELEC *en banc* is mandatory and jurisdictional in invoking the power of review of the Supreme Court. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.[16]

All election cases, including pre-proclamation controversies, shall be decided by the COMELEC in division, and the motion

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[14] *Id.* at 107-110.

[15] *Id.* at 112.

[16] *Repol v. Commission on Elections*, G.R. No. 161418, 28 April 2004, 428 SCRA 321, 330.

for reconsideration shall be decided by the COMELEC *en banc*.[17] As held in *Ambil v. Commission on Elections*,[18] the power of review of the Supreme Court of the rulings of the COMELEC is limited only to the final decision or resolution of the COMELEC *en banc* and not the final resolution of its Division. The Supreme Court has no power to review, *via certiorari*, an interlocutory order or even a final resolution of a Division of the Commission on Elections.

Moreover, pursuant to Section 5 (c), Rule 3[19] of the COMELEC Rules of Procedure, a resolution issued by a Division of the COMELEC must first be elevated to the COMELEC *en banc* by filing a motion for reconsideration.

The filing of a motion for reconsideration is mandatory because the mode by which a decision, order or ruling of the COMELEC *en banc* may be elevated to the Supreme Court is by the special civil action of *certiorari* under Rule 64 of the Rules of Civil Procedure. It is settled that the filing of a motion for reconsideration of the order, resolution or decision of the tribunal, board or office is, subject to well-recognized exceptions, a condition *sine qua non* to the institution of a special civil action for *certiorari*. The rationale therefore is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had.[20]

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[17] *Baytan v. COMELEC*, 444 Phil. 812, 826 (2003); See also *Milla v. Balmores-Laxa*, 454 Phil. 452, 462 (2003); *Villarosa v. COMELEC*, 377 Phil. 497, 506 (1999); *Zarate v. COMELEC*, 376 Phil. 722 (1999); *Canicosa v.COMELEC*, 347 Phil. 189 (1999); *Sarmiento v. COMELEC*, G.R. No. 105628, 06 August 1992, 212 SCRA 307.

[18] 398 Phil. 257 (2000).

[19] Sec. 5. *Quorum; Votes Required.* x x x

(c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except motions on interlocutory orders of the division which shall be resolved by the division which issued the order.

[20] *Alcosero v. NLRC*, 351 Phil. 368, 378 (1998).

Since the COMELEC Rules of Procedure allows the review of a resolution of the Division by the COMELEC *en banc*, the filing of the instant petition for *certiorari* and prohibition is premature. The petition does not allege that petitioner indeed filed a motion for reconsideration before the COMELEC *en banc*. The unquestioned rule in this jurisdiction is that *certiorari* will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent.[21] *Certiorari* cannot be resorted to as a shield from the adverse consequences of petitioner's own omission to file the required motion for reconsideration.[22] A litigant should first exhaust the administrative remedies provided by law before seeking judicial intervention in order to give the administrative agency an opportunity to decide correctly the matter and prevent unnecessary and premature resort to the court.[23] The premature invocation of judicial intervention is fatal to one's cause of action.[24]

WHEREFORE, the instant petition for *certiorari* and prohibition is *DENIED*. Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.*, concur.

Ynares-Santiago, J., on leave.

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[21] *Palomado v. NLRC*, 327 Phil. 472, 481 (1996).

[22] *Alcosero v. NLRC, supra*.

[23] *Joson III v. Court of Appeals*, G.R. No. 160562, 13 February 2006, 482 SCRA 360, 370-371.

[24] *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association – Federation of Free Workers*, G.R. No.142666, 26 September 2005, 471 SCRA 45, 58.

SECOND DIVISION

[A.M. No. RTJ-08-2146. November 14, 2008]
(Formerly OCA-I.P.I. No. 07-2742-RTJ)

MELY HANSOR MAGPALI, *complainant, vs.* **Judge MOISES M. PARDO, Regional Trial Court of Cabarroguis, Quirino, Branch 31,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; ESTABLISHED IN CASE AT BAR. — We concur with the finding of the OCA that the respondent judge is answerable for gross ignorance of the law. Indeed, we find that the respondent judge mishandled the complainant's case, mainly because of his lack of a full understanding of the procedural rules applicable to the case. Without doubt, respondent judge had been remiss in the performance of his duties by failing to keep himself updated on the current law, jurisprudence, and the rules of procedure. As we held in fairly recent administrative cases, a magistrate owes to the public and to this Court the duty to be proficient in the law and to be abreast of legal developments. The respondent judge failed to come up to this exacting standard and this, we cannot countenance.

D E C I S I O N

BRION, *J.*:

We pass upon the verified Complaint dated September 25, 2007 filed by Mely Hansor Magpali (*complainant*) charging Judge Moises Pardo (*respondent judge*, Presiding Judge, Regional Trial Court, Branch 31, Cabarroguis, Quirino) with violation of the Code of Judicial Conduct in the handling of Civil Case No. 659-2007 entitled "*Mely Hansor Magpali v. Moises Magpali.*"

The complaint originated from the civil case filed on June 12, 2007 by the complainant against her husband Moises Magpali for support and alimony *pendente lite*. She alleged that she was initially discouraged when she learned that the case was

raffled to the sala of the respondent judge because her husband and the respondent judge were friends. She decided, however, to give the respondent judge the benefit of the doubt, hoping that he would be sympathetic to her situation as an abandoned wife with no means of livelihood. The complainant further alleged that since the filing of the case and after the filing of her husband's answer dated July 23, 2007, the case had not been set for pre-trial or for a hearing on her prayer for support *pendente lite* notwithstanding her obvious need for support.

The complainant also alleged that in one of her visits to the court to follow-up the status of her case, she spoke with a member of the court's staff (a certain Mr. Jose Enriquez) and with the respondent judge who inquired about the purpose of her visit. On learning that she is the wife of Moises Magpali, the respondent judge allegedly became hostile and commented that she has no right to claim any property from her husband because these properties were acquired prior to their marriage. She explained that the properties were acquired during their marriage, while Mr. Enriquez told the respondent judge that the complaint was for support from her husband. This information elicited the remark from the respondent judge that the complainant has no right to claim support. The complainant interpreted this incident to be a manifestation of the respondent judge's extreme bias, partiality in her husband's favor, and pre-judgment of the case. The complaint lastly alleged that respondent judge had delayed the hearing of the case notwithstanding its urgency; in fact, the case had not been set for hearing since it was filed.

The respondent judge filed on November 29, 2007 his comment to the complaint in compliance with the directive of the Office of the Court Administrator (*OCA*). He disclosed in his Comment that there are two (2) related cases involving the complainant: (a) a Support with Alimony *Pendente Lite* case filed by complainant against her husband; and (b) an Annulment of Marriage case instituted by Moises Magpali against the complainant.

The respondent judge denied the charge that he violated the Code of Judicial Conduct. To prove his point, he contended

that: he had not issued any order or document in connection with either of the two cases showing his partiality or bias towards Moises Magpali; the annulment case was scheduled ahead because the party asked for its scheduling, whereas the complainant did not in any manner request that her petition for support be scheduled for hearing; under Rule 18, par. 1, of the 1997 Rules of Civil Procedure, the complaining party should request for the setting of the case for pre-trial.

The respondent judge likewise denied the remarks attributed to him by the complainant and submitted the affidavit of the Clerk of Court Officer-in-Charge who was present when he talked with the complainant. The affidavit clarified that the respondent judge did not utter the statements attributed to him. Finally, to convince the complainant of the absence of any bias against her, the respondent judge issued an Order inhibiting himself from handling the two cases.

The OCA informed the Court that the case was already ripe for resolution in a Report dated April 24, 2008 signed by then Court Administrator Zenaida N. Elepaño (now retired) and Deputy Court Administrator Reuben P. De la Cruz. The Report likewise presented a brief factual background of the case.

The OCA recommended that the respondent judge be fined in the amount of ₱10,000.00 for gross ignorance of the law with a stern warning that a repetition of the same offense shall be dealt with more severely. The recommendation was based on an evaluation which reads:

EVALUATION: A close examination of the records of this administrative case shows that there is no solid evidence to substantiate the complainant's allegation of bias and partiality against the respondent Judge. Bias and partiality can never be presumed. Bare allegations of partiality will not suffice in the absence of clear and convincing proof that will overcome the presumption that the judge dispensed justice according to law and evidence, without fear and favor (*Chin v. Court of Appeals,* G.R. No. 144618, August 15, 2003).

Settled is the rule that in administrative proceedings, the burden of proof that the respondent committed the acts complained of rests on the complainant. The complainant must be able to show this by

substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, otherwise, the complaint must be dismissed (*Adajar v. Develos*, A.M. No. P-05-2056, [18 November 2005]). The basic rule is that mere allegation is not evidence, and is not equivalent to proof (*Philippine National Bank v. Court of Appeals*, G.R. No. 116181 [6 January 1997]).

In this case, complainant failed to substantiate the allegation that the respondent Judge exhibited extreme bias and has already pre-judged her case. Other than her bare allegations, there is nothing in the records that would prove that the respondent Judge was hostile and made the remarks that she has no right to claim for support. Complainant could have gathered evidence to support the alleged bias or partiality of the respondent Judge. On the other hand, respondent Judge was able to submit an affidavit executed by Mr. Enriquez that no such remark was made or the cited incident actually occurred. On the whole, the evidence on record deals only with evidently self-serving statements of complainant *vis-à-vis* that of the denial of the respondent Judge.

However, respondent Judge should be sanctioned when he disregarded a fundamental rule. The New Code of Judicial Conduct for the Philippine Judiciary requires judges to be embodiments of judicial competence and diligence. Those who accept this exalted position owe to the public and this Court the ability to be proficient in the law and the duty to maintain professional competence at all times (*Lim v. Dumlao*, 454 SCRA 196, March 31, 2005). Indeed, competence is a mark of a good judge. This exalted position entails a lot of responsibilities, foremost of which is proficiency in the law. Once cannot seek refuge in a mere cursory knowledge of statues and procedural rules (*Ualat v. Judge Ramos*, 333 Phil. 175, December 6, 1996).

Respondent Judge fell short of these standards when he failed in his duties to follow elementary law and to keep abreast with prevailing jurisprudence. His claim that the party did not in any manner request that the case be scheduled for hearing as provided under Rule 18, par 1 of the 1997 Rules of Civil Procedure, and that it should be the party who will ask an *ex-parte* setting/scheduling of the case for its pre-trial is not exactly correct. A.M. No. 03-1-09-SC, 16 August 2004 (Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and Use of Deposition-Discovery Measures) provides that within 5 days from date of filing of reply, the plaintiff must promptly move *ex-parte* that the case be

set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial. The respondent Judge should be conversant therewith. The case has not been set for pre-trial or at least for a hearing after the filing of the Answer dated 23 July 2007. He must know the laws and apply them properly. Service in the judiciary involves continuous study and research from beginning to end (*Grieve v. Jaca*, 421 SCRA 117, January 27, 2004).

We concur with the finding of the OCA that the respondent judge is answerable for gross ignorance of the law. Indeed, we find that the respondent judge mishandled the complainant's case, mainly because of his lack of a full understanding of the procedural rules applicable to the case. Without doubt, respondent judge had been remiss in the performance of his duties by failing to keep himself updated on the current law, jurisprudence, and the rules of procedure. As we held in fairly recent administrative cases,[1] a magistrate owes to the public and to this Court the duty to be proficient in the law and to be abreast of legal developments. The respondent judge failed to come up to this exacting standard and this, we cannot countenance.

We approve as well the OCA's recommendation that a fine of ₱10,000.00 be imposed on the respondent judge. This level of fine stresses upon all the need to be legally proficient and competent, while taking into account the level of harm the judge's gross ignorance wrought on the complainant.

WHEREFORE, premises considered, Judge Moises M. Pardo, RTC, Branch 31, Cabarroguis, Quirino is hereby *FINED* in the amount of ₱10,000.00 for gross ignorance of the law, with a *STERN WARNING* that a repetition of the same offense shall be dealt with more severely.

SO ORDERED.

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

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[1] *Coronado v. Judge Eddie Roxas, RTC, Br. 37, General Santos City*, A.M. No. RTJ-07-2047 and *Crispin, et al. v. Judge Eddie Roxas, RTC, Br. 37, Roxas City*, A.M. No. RTJ-07-2048, July 3, 2007, 526 SCRA 280.

SECOND DIVISION

[G.R. No. 138437. November 14, 2008]

RAMON J. QUISUMBING, *petitioner, vs.* **SANDIGANBAYAN (FIFTH DIVISION), REPUBLIC OF THE PHILIPPINES and PHILIPPINE JOURNALIST, INC., represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS OR ORDERS; ORDER DENYING A MOTION TO DISMISS; NATURE. — "An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. **As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment**. Neither can the denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction."

2. ID.; ID.; PARTIES TO CIVIL ACTIONS; PARTIES IN INTEREST; REAL PARTY IN INTEREST, EXPLAINED. — Sec. 2 of Rule 3 of the Revised Rules of Court provides: "Sec. 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." "Interest" within the meaning of the immediately-quoted Rule means material interest or an interest in issue to be affected by the decree, as distinguished from mere interest in the question involved or a mere incidental interest. Otherwise stated, the Rule refers to a real or present substantial interest as distinguished from a mere expectancy, or a future, contingent,

subordinate or consequential interest. As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of a court as a party-plaintiff in an action; if he does, the suit is dismissible on the ground of lack of cause of action.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

Via petition for *certiorari*, Ramon J. Quisumbing (petitioner) assails the Sandiganbayan Resolutions of November 13, 1998[1] and March 16, 1999[2] in Civil Case No. 0172.

The antecedent facts of the case are as follows:

By virtue of a Writ of Sequestration[3] dated April 22, 1986 it issued, the Presidential Commission on Good Government (PCGG) filed on July 13, 1987 a complaint before the Sandiganbayan, docketed as Civil Case No. 0035,[4] "*Republic v. Benjamin 'Kokoy' Romualdez,"* for recovery, conveyance and accounting of various properties and assets of Benjamin Romualdez, deposed President Ferdinand Marcos, former First lady Imelda Romualdez Marcos, and their alleged dummies and cohorts, on the ground that those

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[*] Acting Chairperson in lieu of Justice Leonardo A. Quisumbing who took no part.

[1] Annex "A" of the Petition, *rollo*, pp. 16-27; penned by then Associate Justice and Chairman of the Fifth Division, Hon. Minita V. Chico-Nazario (now an Associate Justice of this Court) and concurred in by Associate Justices Anacleto D. Badoy, Jr., and Godofredo L. Legaspi.

[2] Annex "B" of the Petition, *rollo*, pp. 28-31; penned by then Associate Justice Hon. Minita V. Chico-Nazario and concurred in by Associate Justices Anacleto D. Badoy, Jr., and Ma. Cristina Cortez-Estrada.

[3] *Rollo*, p. 41.

[4] *Id.* at 42-80.

constitute ill-gotten wealth. Among the properties subject of the complaint are those of the Philippine Journalist Inc. (PJI) including untitled parcels of land measuring around 7, 087 square meters situated in Mabini, Batangas (Mabini lots).

During the pendency of Civil Case No. 0035, the then PCGG-appointed members of the PJI Board of Directors, namely Jaime Cura, Johnny Araneta, Angel Sepidoza and Renato Paras, executed a Contract of Sale[5] dated June 5, 1991 and a Deed of Absolute Conveyance[6] dated June 25, 1991 covering the Mabini lots in favor of petitioner, acting as trustee of the Doy Development Corporation. The contracts, called management contracts, were deemed confirmed by PJI Board Resolution No. 91-30[7] dated July 1, 1991.

The Sandiganbayan, acting on the "Urgent Motion to Enjoin PCGG- Appointed Board of Directors from Effecting Sale of PJI Real Properties" filed by PJI stockholder Rosario Olivares, nullified the management contracts, by Resolution[8] of February 25, 1992, on the ground that they were entered into by the abovementioned PJI members of the Board without the Sandiganbayan's prior approval and consent of the PCGG.

Jaime Cura, then President of the PJI who was the signatory to the contracts, assailed *via certiorari* the Sandiganbayan February 22, 1992 Resolution before this Court in G.R. No. 106209. By Resolution[9] of October 5, 1993, this Court sustained the Sandiganbayan, it holding that PJI is a sequestered corporation and all its properties and assets are considered as under *custodia legis*.

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[5] *Id.* at 137.

[6] *Id.* at 140.

[7] *Vide* Minutes of the Regular Meeting of the Board of Directors of Philippine Journalists, Inc., dated July 1, 1991, *id.* at 143-150.

[8] *Id.* at 151-160; penned by Associate Justice Romeo Escareal, Chairman of the Second Division and concurred in by Associate Justices Jose S. Balajadia and Nathanael M. Grospe.

[9] *Id.* at 161-173.

PCGG and PJI thereupon filed before the Sandiganbayan a Complaint[10] against petitioner and the PCGG-appointed PJI members of the Board, docketed as Civil Case No. 0172, for reconveyance of the Mabini lots, the subject of the present petition.

To the complaint, petitioner filed a Motion to Dismiss on the ground of lack of cause of action on the part of the PCGG and the Republic. Petitioner contended that the Mabini lots were never sequestered nor placed in *custodia legis*, hence, the prior authorization of the Sandiganbayan and the consent of PCGG were not necessary; that the Sequestration Order dated April 22, 1996 covered only the shares of Benjamin Romualdez, his relatives, agents and nominees, and not the assets and properties of PJI which is a corporation having a separate and distinct personality from its stockholders; and that the said Order was issued without proper authority, having been signed by only one Commissioner, in violation of Sec. 3 of the PCGG Rules requiring at least two Commissioners to sign any order.

Petitioner maintained that the Republic has no cause of action as it is not a real party in interest, the Mabini lots being exclusively owned by PJI before they were sold and, therefore, the Republic's interest, at most, would only be that of a stockholder of the PJI.

In its Opposition,[11] the Republic maintained that PJI's assets were in *custodia legis* and their disposition required prior approval or confirmation from the Sandiganbayan and the PCGG, following this Court's Resolution sustaining that of the Sandiganbayan that PJI is a sequestered corporation.

Petitioner countered that the Resolutions of the Sandiganbayan and this Court did not bind him because he was not a party to the proceedings therein and that the Resolutions merely assumed, but did not actually find, that the Mabini lots were sequestered.

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[10] *Id.* at 32-40.

[11] Annex "E" of the Petition, *id.* at 192-197.

By Supplemental Motion to Dismiss[12] dated September 2, 1998, petitioner reiterated that the Sequestration Order is null and void in view of the lack of signature of a second Commissioner, citing the then recent decision of this Court in *Republic v. Sandiganbayan*.[13]

The Republic submitted, however, a certified true copy of a Writ of Sequestration dated February 19, 1987 bearing the signatures of Commissioners Ramon A. Diaz and Raul Daza, and a certified true copy of the Sequestration Order dated April 22, 1986 signed by Commissioners Mary Concepcion Bautista and Ramon A. Diaz.

Petitioner assailed the authenticity of the certified copy of the Sequestration Order which he claimed to be a mere fabrication. And he questioned the Writ of Sequestration on the ground that it did not authorize the sequestration of the Mabini lots, but only the shares of stocks held in the PJI by Benjamin Romualdez and his relatives or assignees.

By Resolution of November 4, 1998, the Sandiganbayan denied petitioner's Motion to Dismiss for lack of merit. It held that assuming that there was "inconsistency" in the reproduction of the Sequestration Order which could affect its authenticity, the same had become immaterial owing to the "recently found Writ of Sequestration dated February 19, 1987" bearing the signatures of two Commissioners, which writ superseded the former to thus cure whatever defect it had.

On the issue of whether the Republic is a real party in interest, the Sandiganbayan held that since PJI is a corporation under sequestration by the PCGG representing the government or the Republic in its efforts to recover ill-gotten properties and assets pertaining to former President Marcos *et al*., it is the Republic which is the party which stands to be benefited or injured by the outcome of the case.

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[12] *Id.* at 188-191.

[13] 355 Phil. 181 (1998).

Petitioner's Motion for Reconsideration having been denied, the present petition was filed. This time, petitioner faults the Sandiganbayan solely for its finding that the Republic is a real party in interest.

In its Comment,[14] the Republic, through the Office of the Solicitor General, maintains that the assailed Resolutions denying the motion to dismiss are interlocutory, hence, they cannot be the proper subject of a petition for *certiorari*.

On the merits, the Republic asserts that it is a real party in interest as it stands to be benefited or injured by the outcome of the case.

In a Supplement[15] dated October 22, 2002, petitioner alleges that this Court, in G.R. No. 108552, *"Asset Privatization Trust v. Sandiganbayan (Second Division) and Rosario Olivarez,"*[16] had already overturned its ruling in G.R. 106209 that PJI is a sequestered corporation. To petitioner, the Court's ruling in said case validates his position that PJI is not a sequestered corporation.

Still in another Manifestation dated January 13, 2005,[17] petitioner invokes the ruling of this Court in G.R. No. 138598, *"Asset Privatization Trust v. Sandiganbayan (5th Division) and Rosario Olivarez,"*[18] directing the Asset Privatization Trust (APT) to turn-over the management and control of PJI to its former stockholders upon payment of their outstanding obligations to PJI. And he pleads that this Court take judicial notice of an article[19] in the December 22, 2004 issue of the Philippine Daily Inquirer stating that PJI's former stockholders had already deposited a check for ₱33,364,889.19 with the Sandiganbayan

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[14] *Rollo,* p. 245.

[15] *Id.* at 278-288.

[16] G.R. No. 108552, October 2, 2000, 341 SCRA 551.

[17] *Rollo,* pp. 346-353.

[18] G.R. No. 138598, June 29, 2001, 360 SCRA 437.

[19] Annex "B" of Supplement, *rollo,* p. 360.

on December 21, 2004 and that the formal turn-over of PJI by the APT to its former stockholders was implemented soon thereafter. Hence, petitioner avers that the Republic, through the APT, has lost all rights or interests it claims to have over the PJI.

Petitioner concludes that these recent developments confirm that the government's ownership and control over PJI was on account of PJI's former stockholders' assignment of the controlling shares of stock to APT as security for PJI's loan obligations to APT.

The Court notes that, indeed, the assailed Resolutions denying petitioner's motion to dismiss are interlocutory, hence, not the proper subject of a petition for *certiorari*.

> An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. **As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment**. Neither can the denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[20] (Emphasis supplied)

In order, however, to put the issue to rest given the length of time that the case has been pending, the Court resolves to set aside technicalities.

The petition is without merit.

Sec. 2 of Rule 3 of the Revised Rules of Court provides:

> Sec. 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise

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[20] *Lu Ym v. Nabua*, G.R. No. 161309, February 23, 2005, 452 SCRA 298, 305-306, citing *Bernardo v. CA*, 388 Phil 793.

authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

"Interest" within the meaning of the immediately-quoted Rule means material interest or an interest in issue to be affected by the decree, as distinguished from mere interest in the question involved or a mere incidental interest. Otherwise stated, the Rule refers to a real or present substantial interest as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of a court as a party-plaintiff in an action;[21] if he does, the suit is dismissible on the ground of lack of cause of action.[22]

Prescinding from these precepts, the Court holds that, contrary to petitioner's assertion, the Republic is a real party in interest in Civil Case No. 0172. A cursory perusal of Executive Order (EO) No. 2, "REGARDING [*sic*] THE FUNDS, MONEYS, ASSETS, AND PROPERTIES ILLEGALLY ACQUIRED OR MISAPPROPRIATED BY FORMER PRESIDENT FERDINAND MARCOS, MRS. IMELDA ROMUALDEZ MARCOS, THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUMMIES, AGENTS, OR NOMINEES," issued on March 12, 1986 by then President Aquino, shows that it is for and in behalf of the Republic and the Filipino people that the recovery of the so-called ill-gotten wealth is being undertaken. Thus, the pertinent portion of the EO reads:

x x x x x x x x x

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or property **owned by the**

[21] *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507.

[22] *Pascual v. Court of Appeals*, G.R. No. 115925, August 15, 2003, 409 SCRA 105.

Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationships, resulting in their unjust enrichment and **causing grave damages and prejudice to the Filipino people and the Republic of the Philippines**;

x x x (Emphasis and underscoring supplied)

Evidently, the purpose of going after the assets and properties of the deposed President *et al*. is to protect the interests of the Filipino people and the Government, on the premise that those assets and properties were illegally acquired with the use of public funds or government resources or by taking advantage of their power. Hence, in filing the action for reconveyance, the Republic, through the PCGG, is protecting its interests in the Mabini lots owned by PJI which, as earlier determined by this Court, is a sequestered corporation. As this Court cautioned in *Meralco v. Sandiganbayan*,[23] the deterioration and disappearance of sequestered assets "cannot be allowed to happen, unless there is a final adjudication and disposition of the issue of whether they are ill-gotten or not, since they **may result in damage or prejudice to the Republic**."

Petitioner's reliance on the ruling in G.R. No. 108552 is misplaced. Contrary to petitioner's assertion, said case did not overturn the ruling in G.R. 106209. **What was involved in G.R. No. 108552 was, *inter alia,* the assignment of the shares of PJI's former stockholders to the Development Bank of the Philippines (DBP) in settlement of a loan PJI contracted before its sequestration, hence, the pronouncement therein that only a minority of stockholders' shares were sequestered. To recall Civil Case No. 0172 subject of the present case is for reconveyance and recovery of possession only of the Mabini lots.**

Petitioner's reliance on the ruling in G.R. No. 138598 is likewise misplaced. That case involved the computation of the former PJI stockholders' outstanding obligations to the APT to which DBP assigned the same. Petitioner's plea for the Court

[23] 232 SCRA 644 (1994).

to take judicial notice of the news article on the supposed turnover of PJI to its stockholders thus fails.

Finally, petitioner's arguments that the Republic's failure to pray for the reconveyance to it of the Mabini lots reflects its not being a real party in interest, and that since PJI is already represented by the PCGG, it is superfluous for the Republic to be a co-plaintiff fail. At most, **like its misplaced reliance on rulings of this Court in G.R. Nos. 108552 and 138598**, these are feeble attempts to invoke technicalities to further delay the proceedings in the case.

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

Azcuna,[**] *Tinga, Velasco, Jr.,* and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 154491. November 14, 2008]

COCA-COLA BOTTLERS, PHILS., INC. (CCBPI), Naga Plant, *petitioner, vs.* **QUINTIN J. GOMEZ, a.k.a. "KIT" GOMEZ and DANILO E. GALICIA, a.k.a. "DANNY GALICIA,"** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; SUBSTANTIVE AND PROCEDURAL REQUIREMENTS. — The issuance of a

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[**] Additional member per Raffle dated January 30, 2008 and pursuant to Administrative Circular No. 84-2007, in lieu of Justice Leonardo A. Quisumbing. who took no part.

search warrant against a personal property is governed by Rule 126 of the Revised Rules of Court whose relevant sections state: "Section 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon **probable cause in connection with one specific offense** to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. Section 5. *Examination of complainant; record.* — The judge must, before issuing the warrant, **personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses** he may produce on facts personally known to them and attach to the record their sworn statements together with the affidavits submitted. Section 6. *Issuance and form of search warrant*. — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules." To paraphrase this rule, a search warrant may be issued *only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his or her witnesses.* This is the substantive requirement in the issuance of a search warrant. Procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed, as he has to examine under oath or affirmation the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath. The warrant, if issued, must particularly describe the place to be searched and the things to be seized. We paraphrase these requirements to stress that they have substantive and procedural aspects.

2. ID.; ID.; ID.; ID.; PROBABLE CAUSE; EXPLAINED. — [P]robable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are legally just and proper. Probable cause requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched. Implicit in this statement

is the recognition that an underlying offense must, in the first place, exist. In other words, the acts alleged, taken together, must constitute an offense and that these acts are imputable to an offender in relation with whom a search warrant is applied for.

3. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE; UNFAIR COMPETITION; ELUCIDATED. — "Unfair competition," previously defined in Philippine jurisprudence in relation with R.A. No. 166 and Articles 188 and 189 of the Revised Penal Code, is now covered by Section 168 of the IP Code as this Code has expressly repealed R.A. No. 165 and R.A. No. 166, and Articles 188 and 189 of the Revised Penal Code. Articles 168.1 and 168.2 x x x provide the concept and general rule on the definition of unfair competition. The law does not thereby cover *every unfair act committed in the course of business*; it covers only acts characterized by "*deception* or any other means contrary to good faith" in the *passing off* of goods and services as those of another who has established goodwill in relation with these goods or services, or any other act calculated to produce the same result. What unfair competition is, is further particularized under Section 168.3 when it provides specifics of what unfair competition is "without in any way limiting the scope of protection against unfair competition." Part of these particulars is provided under Section 168.3 (c) which provides the general "catch-all" phrase x x x. Under this phrase, a person shall be guilty of unfair competition "who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another." From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. It formulated the "true test" of unfair competition: whether the acts of defendant are such as are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the particular trade to which the controversy relates. One of the essential requisites in an action to restrain unfair competition is proof of fraud; the intent to deceive must be shown before the right to recover can exist. The advent of the IP Code has not significantly changed these rulings as they are fully in accord with what Section 168 of the Code in its entirety provides.

Deception, passing off and *fraud upon the public* are still the key elements that must be present for unfair competition to exist.

4. ID.; ID.; COVERAGE. — [T]he IP Code x x x [is] a set of rules that refer to a very specific subject — intellectual property. Aside from the IP Code's actual substantive contents (which relate specifically to patents, licensing, trademarks, trade names, service marks, copyrights, and the protection and infringement of the intellectual properties that these protective measures embody), the coverage and intent of the Code is expressly reflected in its "Declaration of State Policy" x x x. "Intellectual property rights" have furthermore been defined under Section 4 of the Code to consist of: a) Copyright and Related Rights; b) Trademarks and Service Marks; c) Geographic Indications; d) Industrial Designs; e) Patents; f) Layout-Designs (Topographies) of Integrated Circuits; and g) Protection of Undisclosed Information. Given the IP Code's specific focus, a first test that should be made when a question arises on whether a matter is covered by the Code is to ask if it refers to an intellectual property as defined in the Code. If it does not, then coverage by the Code may be negated. A second test, if a disputed matter does not expressly refer to an intellectual property right as defined above, is whether it falls under the general "unfair competition" concept and definition under Sections 168.1 and 168.2 of the Code. The question then is whether there is "deception" or any other similar act in "passing off" of goods or services to be those of another who enjoys established goodwill. Separately from these tests is the application of the principles of statutory construction giving particular attention, not so much to the focus of the IP Code generally, but to the terms of Section 168 in particular. Under the principle of "*noscitur a sociis*," when a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated.

5. ID.; ID.; HOARDING MORE SPECIFICALLY COVERED BY RA 623. — The act alleged to violate the petitioner's rights under Section 168.3 (c) is hoarding which we gather to be the collection of the petitioner's empty bottles so that they can be withdrawn from circulation and thus impede the circulation

of the petitioner's bottled products. This, according to the petitioner, is an act contrary to good faith — a conclusion that, if true, is indeed an unfair act on the part of the respondents. The critical question, however, is *not the intrinsic unfairness* of the act of hoarding; what is critical for purposes of Section 168.3 (c) is to determine if the hoarding, as charged, "is of a nature calculated to discredit the goods, business or services" of the petitioner. We hold that it is not. Hoarding as defined by the petitioner is not even an act within the contemplation of the IP Code.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; CONSIDERED DEFECTIVE ON ITS FACE WHEN THE IMPUTED ACTS DO NOT VIOLATE THE CITED OFFENSE. — Where, as in this case, the imputed acts do not violate the cited offense, the ruling of this Court penned by Mr. Justice Bellosillo is particularly instructive: "In the issuance of search warrants, the Rules of Court requires a finding of probable cause in connection with *one specific offense* to be determined personally by the judge after examination of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized. Hence, **since there is no crime to speak of, the search warrant does not even begin to fulfill these stringent requirements and is therefore defective on its face**. The nullity of the warrant renders moot and academic the other issues raised in petitioners' Motion to Quash and Motion for Reconsideration. Since the assailed search warrant is null and void, all property seized by virtue thereof should be returned to petitioners in accordance with established jurisprudence."

APPEARANCES OF COUNSEL

Senior Legal Counsel (SMC) for petitioner.
Rosales & Associates Law Office for respondents.

D E C I S I O N

BRION, *J.*:

Is the hoarding of a competitor's product containers punishable as unfair competition under the Intellectual Property Code (*IP Code*, Republic Act No. 8293) that would entitle the aggrieved party to a search warrant against the hoarder? This is the issue we grapple with in this petition for review on *certiorari* involving two rival multinational softdrink giants; petitioner Coca-Cola Bottlers, Phils., Inc. (*Coca-Cola*) accuses Pepsi Cola Products Phils., Inc. (*Pepsi*), represented by the respondents, of hoarding empty Coke bottles in bad faith to discredit its business and to sabotage its operation in Bicolandia.

BACKGROUND

The facts, as culled from the records, are summarized below.

On July 2, 2001, Coca-Cola applied for a search warrant against Pepsi for hoarding Coke empty bottles in Pepsi's yard in Concepcion Grande, Naga City, an act allegedly penalized as unfair competition under the IP Code. Coca-Cola claimed that the bottles must be confiscated to preclude their illegal use, destruction or concealment by the respondents.[1] In support of the application, Coca-Cola submitted the sworn statements of three witnesses: Naga plant representative **Arnel John Ponce** said he was informed that one of their plant security guards had gained access into the Pepsi compound and had seen empty Coke bottles; acting plant security officer **Ylano A. Regaspi** said he investigated reports that Pepsi was hoarding large quantities of Coke bottles by requesting their security guard to enter the Pepsi plant and he was informed by the security guard that Pepsi hoarded several Coke bottles; security guard **Edwin Lirio** stated that he entered Pepsi's yard on July 2, 2001 at 4 p.m. and saw empty Coke bottles inside Pepsi shells or cases.[2]

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[1] See Paragraph 3 of the Application; records, p. 96.

[2] *Id.*, pp. 98-101.

Municipal Trial Court (*MTC*) Executive Judge Julian C. Ocampo of Naga City, after taking the joint deposition of the witnesses, issued Search Warrant No. 2001-01[3] to seize 2,500 Litro and 3,000 eight and 12 ounces empty Coke bottles at Pepsi's Naga yard for violation of Section 168.3 (c) of the IP Code.[4] The local police seized and brought to the MTC's custody 2,464 Litro and 4,036 eight and 12 ounces empty Coke bottles, 205 Pepsi shells for Litro, and 168 Pepsi shells for smaller (eight and 12 ounces) empty Coke bottles, and later filed with the Office of the City Prosecutor of Naga a complaint against two Pepsi officers for violation of Section 168.3 (c) in relation to Section 170 of the IP Code.[5] The named respondents, also the respondents in this petition, were Pepsi regional sales manager **Danilo E. Galicia** *(Galicia)* and its Naga general manager **Quintin J. Gomez, Jr.** *(Gomez)*.

In their counter-affidavits, Galicia and Gomez claimed that the bottles came from various Pepsi retailers and wholesalers who included them in their return to make up for shortages of empty Pepsi bottles; they had no way of ascertaining beforehand the return of empty Coke bottles as they simply received what had been delivered; the presence of the bottles in their yard was not intentional nor deliberate; Ponce and Regaspi's statements

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[3] *Id.*, pp. 108-109.

[4] Sec. 168. *Unfair Competition, Rights, Regulations and Remedies.* —

x x x x x x x x x

Sec. 168.3: In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

x x x x x x x x x

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or service of another.

[5] Sec. 170. *Penalties.* — Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two years to five years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos (₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

are hearsay as they had no personal knowledge of the alleged crime; there is no mention in the IP Code of the crime of possession of empty bottles; and that the ambiguity of the law, which has a penal nature, must be construed strictly against the State and liberally in their favor. Pepsi security guards Eduardo E. Miral and Rene Acebuche executed a joint affidavit stating that per their logbook, Lirio did not visit or enter the plant premises in the afternoon of July 2, 2001.

The respondents also filed motions for the return of their shells and to quash the search warrant. They contended that no probable cause existed to justify the issuance of the search warrant; the facts charged do not constitute an offense; and their Naga plant was in urgent need of the shells.

Coca-Cola opposed the motions as the shells were part of the evidence of the crime, arguing that Pepsi used the shells in hoarding the bottles. It insisted that the issuance of warrant was based on probable cause for unfair competition under the IP Code, and that the respondents violated R.A. 623, the law regulating the use of stamped or marked bottles, boxes, and other similar containers.

THE MTC RULINGS

On September 19, 2001, the MTC issued the first assailed order[6] denying the twin motions. It explained there was an exhaustive examination of the applicant and its witnesses through searching questions and that the Pepsi shells are *prima facie* evidence that the bottles were placed there by the respondents.

In their motion for reconsideration, the respondents argued for the quashal of the warrant as the MTC did not conduct a probing and exhaustive examination; the applicant and its witnesses had no personal knowledge of facts surrounding the hoarding; the court failed to order the return of the "borrowed" shells; there was no crime involved; the warrant was issued based on hearsay evidence; and the seizure of the shells was illegal because they were not included in the warrant.

[6] Penned by Pairing Judge Irma Isidora M. Boncodin, MTC, Branch 1, Naga; records, p. 23.

On November 14, 2001, the MTC denied the motion for reconsideration in the second assailed order,[7] explaining that the issue of whether there was unfair competition can only be resolved during trial.

The respondents responded by filing a petition for *certiorari* under Rule 65 of the Revised Rules of Court before the Regional Trial Court (RTC) of Naga City on the ground that the subject search warrant was issued without probable cause and that the empty shells were neither mentioned in the warrant nor the objects of the perceived crime.

THE RTC RULINGS

On May 8, 2002, the RTC voided the warrant for lack of probable cause and the non-commission of the crime of unfair competition, even as it implied that other laws may have been violated by the respondents. The RTC, though, found no grave abuse of discretion on the part of the issuing MTC judge.[8] Thus,

> Accordingly, as prayed for, Search Warrant No. 2001-02 issued by the Honorable Judge Julian C. Ocampo III on July 2, 2001 is ANNULLED and SET ASIDE. The Orders issued by the Pairing Judge of Br. 1, MTCC of Naga City dated September 19, 2001 and November 14, 2001 are also declared VOID and SET ASIDE. The City Prosecutor of Naga City and SPO1 Ernesto Paredes are directed to return to the Petitioner the properties seized by virtue of Search Warrant No. 2001-02. No costs.
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> SO ORDERED.[9]

In a motion for reconsideration, which the RTC denied on July 12, 2002, the petitioner stressed that the decision of the RTC was contradictory because it absolved Judge Ocampo of grave abuse of discretion in issuing the search warrant, but at

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[7] Penned by Acting Presiding Judge Jose P. Nacional, MTC, Branch 1, Naga; *id.,* p. 22.

[8] Decision penned by Judge Ramon A. Cruz, RTC, Branch 21; *id.*, pp. 202-211.

[9] *Id.,* p. 210.

the same time nullified the issued warrant. The MTC should have dismissed the petition when it found out that Judge Ocampo did not commit any grave abuse of discretion.

Bypassing the Court of Appeals, the petitioner asks us through this petition for review on *certiorari* under Rule 45 of the Rules of Court to reverse the decision of the RTC. Essentially, the petition raises questions against the RTC's nullification of the warrant when it found no grave abuse of discretion committed by the issuing judge.

THE PETITION and THE PARTIES' POSITIONS

In its petition, the petitioner insists the RTC should have dismissed the respondents' petition for *certiorari* because it found no grave abuse of discretion by the MTC in issuing the search warrant. The petitioner further argues that the IP Code was enacted into law to remedy various forms of unfair competition accompanying globalization as well as to replace the inutile provision of unfair competition under Article 189 of the Revised Penal Code. Section 168.3(c) of the IP Code does not limit the scope of protection on the particular acts enumerated as it expands the meaning of unfair competition to include "other acts contrary to good faith of a nature calculated to discredit the goods, business or services of another." The inherent element of unfair competition is fraud or deceit, and that hoarding of large quantities of a competitor's empty bottles is necessarily characterized by bad faith. It claims that its Bicol bottling operation was prejudiced by the respondents' hoarding and destruction of its empty bottles.

The petitioner also argues that the quashal of the search warrant was improper because it complied with all the essential requisites of a valid warrant. The empty bottles were concealed in Pepsi shells to prevent discovery while they were systematically being destroyed to hamper the petitioner's bottling operation and to undermine the capability of its bottling operations in Bicol.

The respondents counter-argue that although Judge Ocampo conducted his own examination, he gravely erred and abused

his discretion when he ignored the rule on the need of sufficient evidence to establish probable cause; satisfactory and convincing evidence is essential to hold them guilty of unfair competition; the hoarding of empty Coke bottles did not cause actual or probable deception and confusion on the part of the general public; the alleged criminal acts do not show conduct aimed at deceiving the public; there was no attempt to use the empty bottles or pass them off as the respondents' goods.

The respondents also argue that the IP Code does not criminalize bottle hoarding, as the acts penalized must always involve fraud and deceit. The hoarding does not make them liable for unfair competition as there was no deception or fraud on the end-users.

THE ISSUE

Based on the parties' positions, the basic issue submitted to us for resolution is whether the Naga MTC was correct in issuing Search Warrant No. 2001-01 for the seizure of the empty Coke bottles from Pepsi's yard for probable violation of Section 168.3 (c) of the IP Code. This basic issue involves two sub-issues, namely, the substantive issue of whether the application for search warrant effectively charged an offense, *i.e.*, a violation of Section 168.3 (c) of the IP Code; and the procedural issue of whether the MTC observed the procedures required by the Rules of Court in the issuance of search warrants.

OUR RULING

We resolve to deny the petition for lack of merit.

We clarify at the outset that while we agree with the RTC decision, our agreement is more *in the result* than in the reasons that supported it. The decision is correct in nullifying the search warrant because it was issued on an invalid substantive basis — the acts imputed on the respondents do not violate Section 168.3 (c) of the IP Code. For this reason, we deny the present petition.

The issuance of a search warrant[10] against a personal property[11] is governed by Rule 126 of the Revised Rules of Court whose relevant sections state:

Section 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon **probable cause in connection with one specific offense** to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Section 5. *Examination of complainant; record.* — The judge must, before issuing the warrant, **personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses** he may produce on facts personally known to them and attach to the record their sworn statements together with the affidavits submitted.

Section 6. *Issuance and form of search warrant.* — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules. [Emphasis supplied]

To paraphrase this rule, a search warrant may be issued *only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his or her witnesses*. This is the substantive requirement in the issuance of a search warrant. Procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed,

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[10] Rule 126, Section 1. *Search warrant defined.* — A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

[11] Rule 126, Section 3. *Personal property to be seized.* — A search warrant may be issued for the search and seizure of personal property:

(a) Subject of the offense;

(b) Stolen or embezzled and other proceeds or fruits of the offense; or

(c) Used or intended to be used as the means of committing an offense.

as he has to examine under oath or affirmation the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath. The warrant, if issued, must particularly describe the place to be searched and the things to be seized.

We paraphrase these requirements to stress that they have substantive and procedural aspects. Apparently, the RTC recognized this dual nature of the requirements and, hence, treated them separately; it approved of the way the MTC handled the procedural aspects of the issuance of the search warrant but found its action on the substantive aspect wanting. It therefore resolved to nullify the warrant, without however expressly declaring that the MTC gravely abused its discretion when it issued the warrant applied for. The RTC's error, however, is in the form rather than the substance of the decision as the nullification of the issued warrant for the reason the RTC gave was equivalent to the declaration that grave abuse of discretion was committed. In fact, we so rule as the discussions below will show.

Jurisprudence teaches us that probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are legally just and proper. Probable cause requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched.[12] Implicit in this statement is the recognition that an underlying offense must, in the first place, exist. In other words, the acts alleged, taken together, must constitute an offense and that these acts are imputable to an offender in relation with whom a search warrant is applied for.

In the context of the present case, the question is whether the act charged — alleged to be hoarding of empty Coke bottles

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[12] *La Chemise Lacoste, S. A. v. Judge Fernandez,* G.R. Nos. 63796-97, May 21, 1984, 129 SCRA 373.

— constitutes an offense under Section 168.3 (c) of the IP Code. Section 168 in its entirety states:

SECTION 168. Unfair Competition, Rights, Regulation and Remedies. —

168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*. (Sec. 29, R.A. No. 166a)

The petitioner theorizes that the above section does not limit the scope of protection on the particular acts enumerated as it expands the meaning of unfair competition to include "other acts contrary to good faith of a nature calculated to discredit the goods, business or services of another." Allegedly, the respondents' hoarding of Coca Cola empty bottles is one such act.

We do not agree with the petitioner's expansive interpretation of Section 168.3 (c).

"Unfair competition," previously defined in Philippine jurisprudence in relation with R.A. No. 166 and Articles 188 and 189 of the Revised Penal Code, is now covered by Section 168 of the IP Code as this Code has expressly repealed R.A. No. 165 and R.A. No. 166, and Articles 188 and 189 of the Revised Penal Code.

Articles 168.1 and 168.2, as quoted above, provide the concept and general rule on the definition of unfair competition. The law does not thereby cover *every unfair act committed in the course of business*; it covers only acts characterized by "*deception* or any other means contrary to good faith" in the *passing off* of goods and services as those of another who has established goodwill in relation with these goods or services, or any other act calculated to produce the same result.

What unfair competition is, is further particularized under Section 168.3 when it provides specifics of what unfair competition is "without in any way limiting the scope of protection against unfair competition." Part of these particulars is provided under Section 168.3(c) which provides the general "catch-all" phrase that the petitioner cites. Under this phrase, a person shall be guilty of unfair competition "who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another."

From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon

the public the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. It formulated the "true test" of unfair competition: whether the acts of defendant are such as are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the particular trade to which the controversy relates.[13] One of the essential requisites in an action to restrain unfair competition is proof of fraud; the intent to deceive must be shown before the right to recover can exist.[14] The advent of the IP Code has not significantly changed these rulings as they are fully in accord with what Section 168 of the Code in its entirety provides. *Deception, passing off* and *fraud upon the public* are still the key elements that must be present for unfair competition to exist.

The act alleged to violate the petitioner's rights under Section 168.3 (c) is hoarding which we gather to be the collection of the petitioner's empty bottles so that they can be withdrawn from circulation and thus impede the circulation of the petitioner's bottled products. This, according to the petitioner, is an act contrary to good faith — a conclusion that, if true, is indeed an unfair act on the part of the respondents. The critical question, however, is *not the intrinsic unfairness* of the act of hoarding; what is critical for purposes of Section 168.3 (c) is to determine if the hoarding, as charged, "is of a nature calculated to discredit the goods, business or services" of the petitioner.

We hold that it is not. Hoarding as defined by the petitioner is not even an act within the contemplation of the IP Code.

The petitioner's cited basis is a provision of the IP Code, a set of rules that refer to a very specific subject — intellectual property. Aside from the IP Code's actual substantive contents (which relate specifically to patents, licensing, trademarks, trade names, service marks, copyrights, and the protection and

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[13] *Alhambra Cigar & Cigarette Manufacturing Co. v. Mojica*, 27 Phil. 266 (1914).

[14] *Compania General de Tabacos de Filipinas v. Alhambra Cigar & Cigarette Manufacturing Co.*, 33 Phil. 485 (1916).

infringement of the intellectual properties that these protective measures embody), the coverage and intent of the Code is expressly reflected in its "Declaration of State Policy" which states:

> Section 2. Declaration of State Policy. — The State recognizes that an effective *intellectual and industrial property system* is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the *exclusive rights* of scientists, inventors, artists and other gifted citizens *to their intellectual property and creations*, particularly when beneficial to the people, for such periods as provided in this Act.
>
> The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.
>
> It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

"Intellectual property rights" have furthermore been defined under Section 4 of the Code to consist of: a) Copyright and Related Rights; b) Trademarks and Service Marks; c) Geographic Indications; d) IndustrialDesigns; e) Patents; f) Layout-Designs (Topographies) of Integrated Circuits; and g)Protection of Undisclosed Information.

Given the IP Code's specific focus, a first test that should be made when a question arises on whether a matter is covered by the Code is to ask if it refers to an intellectual property as defined in the Code. If it does not, then coverage by the Code may be negated.

A second test, if a disputed matter does not expressly refer to an intellectual property right as defined above, is whether it falls under the general "unfair competition" concept and definition under Sections 168.1 and 168.2 of the Code. The question then is whether there is "deception" or any other similar act in

"passing off" of goods or services to be those of another who enjoys established goodwill.

Separately from these tests is the application of the principles of statutory construction giving particular attention, not so much to the focus of the IP Code generally, but to the terms of Section 168 in particular. Under the principle of *"noscitur a sociis,"* when a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated.[15]

As basis for this interpretative analysis, we note that **Section 168.1** speaks of a person who has earned goodwill with respect to his goods and services and who is entitled to protection under the Code, with or without a registered mark. **Section 168.2**, as previously discussed, refers to the general definition of unfair competition. **Section 168.3,** on the other hand, refers to the specific instances of unfair competition, with **Section 168.1** referring to the sale of goods given the appearance of the goods of another; **Section 168.2**, to the inducement of belief that his or her goods or services are that of another who has earned goodwill; while the disputed **Section 168.3** being a "catch all" clause whose coverage the parties now dispute.

Under all the above approaches, we conclude that the "hoarding" - as defined and charged by the petitioner — does not fall within the coverage of the IP Code and of Section 168 in particular. It does not relate to any patent, trademark, trade name or service mark that the respondents have invaded, intruded into or used without proper authority from the petitioner. Nor are the respondents alleged to be fraudulently "passing off" their products or services as those of the petitioner. The respondents are not also alleged to be undertaking any representation or misrepresentation that would confuse or tend to confuse the goods of the petitioner with those of the respondents, or *vice*

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[15] Agpalo, *Statutory Construction,* 3rd (1995) Ed., at p. 159, citing *Co Kim Chan v. Valdez Tan Keh*, 75 Phil. 371, and *Soriano v. Sandiganbayan*, G.R. No. 65952, July 1, 1984, among others.

versa. What in fact the petitioner alleges is an act foreign to the Code, to the concepts it embodies and to the acts it regulates; as alleged, hoarding inflicts unfairness by seeking to limit the opposition's sales by depriving it of the bottles it can use for these sales.

In this light, hoarding for purposes of destruction is closer to what another law — R.A. No. 623 — covers, to wit:

> SECTION 1. Persons engaged or licensed to engage in the manufacture, bottling or selling of soda water, mineral or aerated waters, cider, milk, cream, or other lawful beverages in bottles, boxes, casks, kegs, or barrels, and other similar containers, with their names or the names of their principals or products, or other marks of ownership stamped or marked thereon, may register with the Philippine Patent Office a description of the names or are used by them, under the same conditions, rules, and regulations, made applicable by law or regulation to the issuance of trademarks.
>
> SECTION 2. It shall be unlawful for any person, without the written consent of the manufacturer, bottler or seller who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, ***to fill such bottles, boxes, kegs, barrels, or other similar containers so marked or stamped, for the purpose of sale, or to sell, dispose of, buy, or traffic in, or wantonly destroy the same, whether filled or not, or to use the same for drinking vessels or glasses or for any other purpose than that registered by the manufacturer, bottler or seller***. Any violation of this section shall be punished by a fine or not more than one hundred pesos or imprisonment of not more than thirty days or both.

As its coverage is defined under Section 1, the Act appears to be a measure that may overlap or be affected by the provisions of Part II of the IP Code on "The Law on Trademarks, Service Marks and Trade Names." What is certain is that the IP Code has not expressly repealed this Act. The Act appears, too, to have specific reference to a special type of registrants — the manufacturers, bottlers or sellers of soda water, mineral or aerated waters, cider, milk, cream, or other lawful beverages in bottles, boxes, casks, kegs, or barrels, and other similar containers — who are given special protection with respect to the containers

they use. In this sense, it is in fact a law of specific coverage and application, compared with the general terms and application of the IP Code. Thus, under its Section 2, it speaks specifically of unlawful use of containers and even of the unlawfulness of their wanton destruction – a matter that escapes the IP Code's generalities unless linked with the concepts of "deception" and "passing off" as discussed above.

Unfortunately, the Act is not the law in issue in the present case and one that the parties did not consider at all in the search warrant application. The petitioner in fact could not have cited it in its search warrant application since the "one specific offense" that the law allows and which the petitioner used was Section 168.3 (c). If it serves any purpose at all in our discussions, it is to show that the underlying factual situation of the present case is in fact covered by another law, not by the IP Code that the petitioner cites. Viewed in this light, the lack of probable cause to support the disputed search warrant at once becomes apparent.

Where, as in this case, the imputed acts do not violate the cited offense, the ruling of this Court penned by Mr. Justice Bellosillo is particularly instructive:

> In the issuance of search warrants, the Rules of Court requires a finding of probable cause in connection with *one specific offense* to be determined personally by the judge after examination of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized. Hence, **since there is no crime to speak of, the search warrant does not even begin to fulfill these stringent requirements and is therefore defective on its face**. The nullity of the warrant renders moot and academic the other issues raised in petitioners' Motion to Quash and Motion for Reconsideration. Since the assailed search warrant is null and void, all property seized by virtue thereof should be returned to petitioners in accordance with established jurisprudence.[16]

Based on the foregoing, we conclude that the RTC correctly ruled that the petitioner's search warrant should properly be

[16] *Supra* note 12, pp. 705-706.

quashed for the petitioner's failure to show that the acts imputed to the respondents do not violate the cited offense. There could not have been any probable cause to support the issuance of a search warrant because no crime in the first place was effectively charged. This conclusion renders unnecessary any further discussion on whether the search warrant application properly alleged that the imputed act of holding Coke empties was in fact a "hoarding" in bad faith aimed to prejudice the petitioner's operations, or whether the MTC duly complied with the procedural requirements for the issuance of a search warrant under Rule 126 of the Rules of Court.

WHEREFORE, we hereby *DENY* the petition for lack of merit. Accordingly, we confirm that Search Warrant No. 2001-01, issued by the Municipal Trial Court, Branch 1, Naga City, is *NULL* and *VOID*. Costs against the petitioner.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 156029. November 14, 2008]

SANTOSA B. DATUMAN, *petitioner, vs.* **FIRST COSMOPOLITAN MANPOWER AND PROMOTION SERVICES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT OF WORKERS; PRIVATE EMPLOYMENT AGENCIES ARE HELD JOINTLY AND SEVERALLY LIABLE WITH THE

FOREIGN-BASED EMPLOYER FOR ANY VIOLATION OF THE RECRUITMENT AGREEMENT OR CONTRACT OF EMPLOYMENT. — [T]he private employment agency shall assume joint and solidary liability with the employer. This Court has, time and again, ruled that private employment agencies are held jointly and severally liable with the foreign-based employer *for any violation of the recruitment agreement or contract of employment.* This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of *immediate and sufficient payment* of what is due him. This is in line with the policy of the state to protect and alleviate the plight of the working class.

2. ID.; ID.; ID.; A SUBSEQUENTLY EXECUTED SIDE AGREEMENT OF AN OVERSEAS CONTRACT WORKER WITH HER FOREIGN EMPLOYER REDUCING HER SALARY BELOW THE AMOUNT APPROVED BY THE POEA IS VOID. — In *Placewell International Services Corporation v. Camote*, we held that the subsequently executed side agreement of an overseas contract worker with her foreign employer which reduced her salary below the amount approved by the POEA is void because it is against our existing laws, morals and public policy. The said side agreement cannot supersede the terms of the standard employment contract approved by the POEA.

3. ID.; ID.; ID.; RECRUITMENT AGENCIES SHOULD ENSURE THAT THE TERMS AND CONDITIONS OF THE EMPLOYMENT CONTRACT, AS APPROVED BY THE POEA, ARE FAITHFULLY COMPLIED WITH BY THEIR FOREIGN PRINCIPALS. — We look upon with great disfavor the unsubstantiated actuations of innocence or ignorance on the part of local recruitment agencies of acts of their foreign principals, as if the agencies' responsibility ends with the deployment of the worker. In the light of the recruitment agency's legally mandated joint and several liability with the foreign employer for ***all*** claims in connection with the ***implementation of the contract***, it is the recruitment agency's responsibility to ensure that the terms and conditions of the employment contract, as approved by the POEA, are faithfully complied with and implemented properly by its foreign client/ principal. Indeed, it is in its best interest to do so to avoid

being haled to the courts or labor tribunals and defend itself from suits for acts of its foreign principal.

4. ID.; ID.; PRESCRIPTION OF OFFENSES AND CLAIMS; MONEY CLAIMS; PRESCRIPTIVE PERIOD; CASE AT BAR. — Article 291 of the Labor Code x x x provides that: "Art. 291. Money Claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within **three years** from the time that cause of action accrued; otherwise, they shall be forever barred. x x x [T]he right to claim unpaid salaries (or in this case, unpaid salary differentials) accrue ***as they fall due***. Thus, petitioner's cause of action to claim salary differential for October 1989 only accrued after she had rendered service for that month (or at the end of October 1989). Her right to claim salary differential for November 1989 only accrued at the end of November 1989, and so on and so forth.

APPEARANCES OF COUNSEL

Jaso Salgado Neri Law Office for petitioner.
R. Go & J. Ngo Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Court of Appeals (CA) Decision[1] dated August 7, 2002, in CA-G.R. SP No. 59825, setting aside the Decision of the National Labor Relations Commission (NLRC).

The facts are as follows:

Sometime in 1989, respondent First Cosmopolitan Manpower & Promotion Services, Inc. recruited petitioner Santosa B. Datuman to work abroad under the following terms and conditions:

[1] Penned by then Associate Justice Romeo A. Brawner and concurred in by Associate Justices Jose L. Sabio, Jr. and Mario L. Guarina III.

Site of employment	–	Bahrain
Employees Classification/Position/Grade	–	Saleslady
Basic Monthly Salary	–	US$370.00
Duration of Contract	–	One (1) year
Foreign Employer	–	Mohammed Sharif Abbas Ghulam Hussain[2]

On April 17, 1989, petitioner was deployed to Bahrain after paying the required placement fee. However, her employer Mohammed Hussain took her passport when she arrived there; and instead of working as a saleslady, she was forced to work as a domestic helper with a salary of Forty Bahrain Dinar (BD40.00), equivalent only to One Hundred US Dollars (US$100.00). This was contrary to the agreed salary of US$370.00 indicated in her Contract of Employment signed in the Philippines and approved by the Philippine Overseas Employment Administration (POEA).[3]

On September 1, 1989, her employer compelled her to sign another contract, transferring her to another employer as housemaid with a salary of BD40.00 for the duration of two (2) years.[4] She pleaded with him to give her a release paper and to return her passport but her pleas were unheeded. Left with no choice, she continued working against her will. Worse, she even worked without compensation from September 1991 to April 1993 because of her employer's continued failure and refusal to pay her salary despite demand. In May 1993, she was able to finally return to the Philippines through the help of the Bahrain Passport and Immigration Department.[5]

In May 1995, petitioner filed a complaint before the POEA Adjudication Office against respondent for underpayment and nonpayment of salary, vacation leave pay and refund of her

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[2] Annexes B – B-2, Court of Appeals (CA) *Rollo* at 79-81.

[3] *Id.*

[4] Annex "A", CA *Rollo* at 77.

[5] Petition for Review in the CA, CA *Rollo*.

plane fare, docketed as Case No. POEA ADJ. (L) 95-05-1586.[6] While the case was pending, she filed the instant case before the NLRC for underpayment of salary for a period of one year and six months, nonpayment of vacation pay and reimbursement of return airfare.

When the parties failed to arrive at an amicable settlement before the Labor Arbiter, they were required to file their respective position papers, subsequent pleadings and documentary exhibits.

In its Position Paper,[7] respondent countered that petitioner actually agreed to work in Bahrain as a housemaid for one (1) year because it was the only position available then. However, since such position was not yet allowed by the POEA at that time, they mutually agreed to submit the contract to the POEA indicating petitioner's position as saleslady. Respondent added that it was actually petitioner herself who violated the terms of their contract when she allegedly transferred to another employer without respondent's knowledge and approval. Lastly, respondent raised the defense of prescription of cause of action since the claim was filed beyond the three (3)-year period from the time the right accrued, reckoned from either 1990 or 1991.[8]

On April 29, 1998, Labor Arbiter Jovencio Mayor, Jr. rendered a Decision finding respondent liable for violating the terms of the Employment Contract and ordering it to pay petitioner: (a) the amount of US$4,050.00, or its equivalent rate prevailing at the time of payment, representing her salary differentials for fifteen (15) months; and, (b) the amount of BD 180.00 or its equivalent rate prevailing at the time of payment, representing the refund of plane ticket, thus:

> From the foregoing factual backdrop, the only crucial issue for us to resolve in this case is whether or not complainant is entitled to her monetary claims.
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[6] *Rollo* at 86.

[7] CA Petition-Annex "H", CA *Rollo*.

[8] *Id.*, at 97-98.

In the instant case, from the facts and circumstances laid down, it is thus self-evident that the relationship of the complainant and respondent agency is governed by the Contract of Employment, the basic terms a covenants of which provided for the position of saleslady, monthly compensation of US$370.00 and duration of contract for one (1) year. As it is, when the parties — complainant and respondent Agency — signed and executed the POEA — approved Contract of Employment, this agreement is the law that governs them. Thus, when respondent agency deviated from the terms of the contract by assigning the position of a housemaid to complainant instead of a saleslady as agreed upon in the POEA-approved Contract of Employment, respondent Agency committed a breach of said Employment Contract. **Worthy of mention is the fact that respondent agency in their Position Paper paragraph 2, Brief Statement of the Facts and of the Case — admitted that it had entered into an illegal contract with complainant by proposing the position of a housemaid which said position was then not allowed by the POEA, by making it appear in the Employment Contract that the position being applied for is the position of a saleslady. As it is, we find indubitably clear that the foreign employer had took advantage to the herein hopeless complainant and because of this ordeal, the same obviously rendered complainant's continuous employment unreasonable if not downright impossible**. The facts and surrounding circumstances of her ordeal was convincingly laid down by the complainant in her Position Paper, from which we find no flaws material enough to disregard the same. Complainant had clearly made out her case and no amount of persuasion can convince us to tilt the scales of justice in favor of respondents whose defense was anchored solely on the flimsy allegations that for a period of more than five (5) years — from 1989 until 1995 — nothing was heard from her or from her relatives, presuming then that complainant had no problem with her employment abroad. We also find that the pleadings and the annexes filed by the parties reveal a total lapse on the part of respondent First Cosmopolitan Manpower and Promotions — their failure to support with substantial evidence their contention that complainant transferred from one employer to another without knowledge and approval of respondent agency in contravention of the terms of the POEA approved Employment Contract. Obviously, respondent Agency anchored its disquisition on the alleged "contracts" signed by the complainant that she agreed with the terms of said contracts — one (1) year duration only and as a housemaid — to support its contention

that complainant violated the contract agreement by transferring from one employer to another on her own volition without the knowledge and consent of respondent agency. To us, this posture of respondent agency is unavailing. These "documents" are self-serving. We could not but rule that the same were fabricated to tailor-fit their defense that complainant was guilty of violating the terms of the Employment Contract. Consequently, we could not avoid the inference of a more logical conclusion that **complainant was forced against her will to continue with her employment notwithstanding the fact that it was in violation of the original Employment Contract including the illegal withholding of her passport.**

With the foregoing, we find and so rule that respondent Agency failed to discharge the burden of proving with substantial evidence that complainant violated the terms of the Employment Contract, thus negating respondent Agency's liability for complainant's money claims. All the more, the record is bereft of any evidence to show that complainant Datuman is either not entitled to her wage differentials or have already received the same from respondent. As such, we are perforce constrained to grant complainant's prayer for payment of salary differentials computed as follows:

January 1992 April 1993 (15 months)
US$370.00 agreed salary
US$100.00 actual paid salary
US$270.00 balance

US$270.00 x 15 months = US$4050.00

We are also inclined to grant complainant's entitlement to a refund of her plane ticket in the amount of BD 180 Bahrain Dinar or the equivalent in Philippine Currency at the rate of exchange prevailing at the time of payment.

Anent complainant's claim for vacation leave pay and overtime pay, we cannot, however, grant the same for failure on the part of complainant to prove with particularity the months that she was not granted vacation leave and the day wherein she did render overtime work.

Also, we could not grant complainant's prayer for award of damages and attorney's fees for lack of factual and legal basis.

WHEREFORE, premises considered, judgment is hereby rendered, finding respondent Agency liable for violating the term of Employment

Contract and respondent First Cosmopolitan Manpower and Promotions is hereby ordered:

To pay complainant the amount of US$ FOUR THOUSAND AND FIFTY (US$4,050.00), or its equivalent rate prevailing at the time of payment, representing her salary differentials for fifteen (15) months;

To pay complainant the amount of BD 180.00 or its equivalent rate prevailing at the time of payment, representing the refund of plane ticket;

All other claims are hereby dismissed for lack of merit.
SO ORDERED.[9] (emphasis supplied)

On appeal, the NLRC, Second Division, issued a Decision[10] affirming with modification the Decision of Labor Arbiter Mayor, Jr., by reducing the award of salary differentials from US$4,050.00 to US$2,970.00 ratiocinating as follows:

Accordingly, we find that the claims for salary differentials accruing earlier than April of 1993 had indeed prescribed. This is so as complainant had filed her complaint on May 31, 1995 when she arrived from the jobsite in April 1993. Since the cause of action for salary differential accrues at the time when it falls due, it is clear that only the claims for the months of May 1993 to April 1994 have not yet prescribed. With an approved salary rate of US$370.00 *vis-à-vis* the amount of salary received which was $100.00, complainant is entitled to the salary differential for the said period in the amount of $2,970.00.

x x x x x x x x x

WHEREFORE, premises considered, judgment is hereby rendered MODIFYING the assailed Decision by reducing the award of salary differentials to $2,970.00 to the complainant.

The rest of the disposition is AFFIRMED.

SO ORDERED.[11]

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[9] *Rollo* at 108-113.

[10] Promulgated on February 24, 2000, penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul Aquino and Commissioner Angelita Gacutan.

[11] *Rollo* at 161.

On July 21, 2000, respondent elevated the matter to the CA through a petition for *certiorari* under Rule 65.

On August 2, 2000,[12] the CA dismissed the petition for being insufficient in form pursuant to the last paragraph of Section 3, Rule 42 of the 1997 Rules of Civil Procedure, as amended.

On October 20, 2000,[13] however, the CA reinstated the petition upon respondent's motion for reconsideration.[14]

On August 7, 2002, the CA issued the assailed Decision[15] granting the petition and reversing the NLRC and the Labor Arbiter, thus:

> Under Section 1 (f), Rule II, Book II of the 1991 POEA Rules and Regulations, the local agency shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, health and disability compensation and repatriation.
>
> Respondent Commission was correct in declaring that claims of private respondent "for salary differentials accruing earlier than April of 1993 had indeed prescribed." It must be noted that petitioner company is privy only to the first contract. Granting *arguendo* that its liability extends to the acts of its foreign principal, the Towering Recruiting Services, which appears to have a hand in the execution of the second contract, it is Our considered opinion that the same would, at the most, extend only up to the expiration of the second contract or until 01 September 1991. Clearly, the money claims subject of the complaint filed in 1995 had prescribed.
>
> However, this Court declares respondent Commission as not only having abused its discretion, but as being without jurisdiction at all, in declaring private respondent entitled to salary differentials. After decreeing the money claims accruing before April 1993 as having prescribed, it has no more jurisdiction to hold petitioner company

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[12] CA *Rollo* at 45.

[13] *Id.*, at 91.

[14] *Id.*, at 91-92.

[15] *Id.*, at 37-43.

for salary differentials after that period. To reiterate, the local agency shall assume joint and solidary liability with the employer for all claims and liabilities which may arise *in connection with the implementation of the contract*. Which contract? Upon a judicious consideration, we so hold that it is *only in connection with the first contract*. The provisions in number 2, Section 10 (a), Rule V, Book I of the Omnibus Rules Implementing the Labor Code Section 1 (f), Rule II, Book II of the 1991 POEA Rules and Regulations were not made to make the local agency a perpetual insurer against all untoward acts that may be done by the foreign principal or the direct employer abroad. It is only as regards the principal contract to which it is privy shall its liability extend. In *Catan v. National Labor Relations Commission*, 160 SCRA 691 (1988), it was held that the responsibilities of the local agent and the foreign principal towards the contracted employees under the recruitment agreement extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement.

x x x x x x x x x

Foregoing considered, the assailed Decision dated 24 February 2000 and the Resolution dated 23 June 2000 of respondent Commission in NLRC NCR CA 016354-98 are hereby **SET ASIDE**.

SO ORDERED.[16]

Petitioner's Motion for Reconsideration[17] thereon was denied in the assailed Resolution[18] dated November 14, 2002.

Hence, the present petition based on the following grounds:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT ABANDONED THE FACTUAL FINDINGS OF THE LABOR ARBITER AS AFFIRMED BY THE NATIONAL LABOR RELATIONS COMMISSION.

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[16] *Rollo* at 41-42.

[17] CA *Rollo* at 121-133.

[18] *Id.*, at 46-47.

II.

THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN HOLDING THAT THE RESPONDENT AGENCY IS ONLY A [sic] PRIVY AND LIABLE TO THE PRINCIPAL CONTRACT.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE CAUSE OF ACTION OF THE PETITIONER ALREADY PRESCRIBED.

The respondent counters in its Comment that the CA is correct in ruling that it is not liable for the monetary claims of petitioner as the claim had already prescribed and had no factual basis.

Simply put, the issues boil down to whether the CA erred in not holding respondent liable for petitioner's money claims pursuant to their Contract of Employment.

We grant the petition.

On whether respondent is solidarily liable for petitioner's monetary claims

Section 1 of Rule II of the POEA Rules and Regulations states that:

> Section 1. Requirements for Issuance of License. — Every applicant for license to operate a private employment agency or manning agency shall submit a written application together with the following requirements:
>
> x x x x x x x x x
>
> f. A verified undertaking stating that the applicant:
>
> x x x x x x x x x
>
> (3) Shall assume **joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract**; including but not limited to payment of wages, death and disability compensation and repatriation. (emphasis supplied)

The above provisions are clear that the private employment agency shall assume joint and solidary liability with the employer.[19] This Court has, time and again, ruled that private employment agencies are held jointly and severally liable with the foreign-based employer *for any violation of the recruitment agreement or contract of employment.*[20] This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of *immediate and sufficient payment* of what is due him.[21] This is in line with the policy of the state to protect and alleviate the plight of the working class.

In the assailed Decision, the CA disregarded the aforecited provision of the law and the policy of the state when it reversed the findings of the NLRC and the Labor Arbiter. As the agency which recruited petitioner, respondent is jointly and solidarily liable with the latter's principal employer abroad for her (petitioner's) money claims. Respondent cannot, therefore, exempt itself from all the claims and liabilities arising from the implementation of their POEA-approved Contract of Employment.

We cannot agree with the view of the CA that the solidary liability of respondent extends only to the first contract (*i.e.* the original, POEA-approved contract which had a term of until April 1990). The signing of the "substitute" contracts with the foreign employer/principal ***before*** the expiration of the POEA-approved contract and any continuation of petitioner's employment beyond the original one-year term, against the will of petitioner, are continuing breaches of the original POEA-approved contract. To accept the CA's reasoning will open the floodgates to even more abuse of our overseas workers at the hands of their foreign

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[19] *Skippers United Pacific, Inc. and J.P. Samartzsis Maritime Enterprises Co., S.A. v. Jerry Maguad and Porferio Ciudadano*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 668.

[20] *Hellenic Philippine Shipping, Inc. v. Siete*, G.R. No. 84082, March 13, 1991, 195 SCRA 179, 186; *Empire Insurance Company v. NLRC*, G.R. No. 121879, August 14, 1998, 294 SCRA 263, 271-272.

[21] *P.I. Manpower Placements, Inc. v. NLRC (Second Division)*, G.R. No. 97369, July 31, 1997, 276 SCRA 451, 461.

employers and local recruiters, since the recruitment agency could easily escape its mandated solidary liability for breaches of the POEA-approved contract by colluding with their foreign principals in substituting the approved contract with another upon the worker's arrival in the country of employment. Such outcome is certainly contrary to the State's policy of extending protection and support to our overseas workers. To be sure, Republic Act No. 8042 explicitly prohibits the substitution or alteration to the prejudice of the worker of employment contracts already approved and verified by the Department of Labor and Employment (DOLE) from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE.[22]

Respondent's contention that it was petitioner herself who violated their Contract of Employment when she signed another contract in Bahrain deserves scant consideration. It is the finding of both the Labor Arbiter and the NLRC — which, significantly, the CA did not disturb — that petitioner was forced to work long after the term of her original POEA-approved contract, through the illegal acts of the foreign employer.

In *Placewell International Services Corporation v. Camote*,[23] we held that the subsequently executed side agreement of an overseas contract worker with her foreign employer which reduced her salary below the amount approved by the POEA is void because it is against our existing laws, morals and public policy. The said side agreement cannot supersede the terms of the standard employment contract approved by the POEA.

Hence, in the present case, the diminution in the salary of petitioner from US$370.00 to US$100 (BD 40.00) per month is void for violating the POEA-approved contract which set the minimum standards, terms, and conditions of her employment. Consequently, the solidary liability of respondent with petitioner's

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[22] *Placewell International Services Corporation v. Camote,* G.R. No. 169973, June 26, 2006, 492 SCRA 761.

[23] *Id.*, citing *Chavez v. Bonto-Perez*, G.R. No. 109808, March 1, 1995, 242 SCRA 73.

foreign employer for petitioner's money claims continues although she was forced to sign another contract in Bahrain. It is the terms of the original POEA-approved employment contract that shall govern the relationship of petitioner with the respondent recruitment agency and the foreign employer. We agree with the Labor Arbiter and the NLRC that the precepts of justice and fairness dictate that petitioner must be compensated for *all* months worked regardless of the supposed termination of the original contract in April 1990. It is undisputed that petitioner was compelled to render service until April 1993 and for the entire period that she worked for the foreign employer or his unilaterally appointed successor, she should have been paid US$370/month for every month worked in accordance with her original contract.

Respondent cannot disclaim liability for the acts of the foreign employer which forced petitioner to remain employed in violation of our laws and under the most oppressive conditions on the allegation that it purportedly had no knowledge of, or participation in, the contract unwillingly signed by petitioner abroad. We cannot give credence to this claim considering that respondent by its own allegations *knew* from the outset that the contract submitted to the POEA for approval was not to be the "real" contract. Respondent blithely admitted to submitting to the POEA a contract stating that the position to be filled by petitioner is that of "Saleslady" although she was to be employed as a domestic helper since the latter position was not approved for deployment by the POEA at that time. Respondent's evident bad faith and *admitted* circumvention of the laws and regulations on migrant workers belie its protestations of innocence and put petitioner in a position where she could be exploited and taken advantage of overseas, as what indeed happened to her in this case.

We look upon with great disfavor the unsubstantiated actuations of innocence or ignorance on the part of local recruitment agencies of acts of their foreign principals, as if the agencies' responsibility ends with the deployment of the worker. In the light of the recruitment agency's legally mandated joint and several liability with the foreign employer for ***all*** claims in connection with the ***implementation of the contract,*** it is the recruitment agency's

responsibility to ensure that the terms and conditions of the employment contract, as approved by the POEA, are faithfully complied with and implemented properly by its foreign client/ principal. Indeed, it is in its best interest to do so to avoid being haled to the courts or labor tribunals and defend itself from suits for acts of its foreign principal.

On whether petitioner's claims for underpaid salaries have prescribed

It should be recalled that the Labor Arbiter and the NLRC similarly found that petitioner is entitled to underpaid salaries, albeit they differed in the number of months for which salary differentials should be paid. The CA, on the other hand, held that all of petitioner's monetary claims have prescribed pursuant to Article 291 of the Labor Code which provides that:

> Art. 291. Money Claims. —All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within **three years** from the time that cause of action accrued; otherwise, they shall be forever barred. (emphasis supplied)

We do not agree with the CA when it held that the cause of action of petitioner had already prescribed as the three-year prescriptive period should be reckoned from September 1, 1989 when petitioner was forced to sign another contract against her will. As stated in the complaint, one of petitioner's causes of action was for underpayment of salaries. The NLRC correctly ruled the right to claim unpaid salaries (or in this case, unpaid salary differentials) accrue ***as they fall due***.[24] Thus, petitioner's cause of action to claim salary differential for October 1989 only accrued after she had rendered service for that month (or at the end of October 1989). Her right to claim salary differential for November 1989 only accrued at the end of November 1989, and so on and so forth.

Both the Labor Arbiter and the NLRC found that petitioner was forced to work until April 1993. Interestingly, the CA did

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[24] NLRC Decision, *Rollo* at 160.

not disturb this finding but held only that the extent of respondent's liability was limited to the term under the original contract or, at most, to the term of the subsequent contract entered into with the participation of respondent's foreign principal, *i.e.* 1991. We have discussed previously the reasons why (a) the CA's theory of limited liability on the part of respondent is untenable and (b) the petitioner has a right to be compensated for all months she, in fact, was forced to work. To determine for which months petitioner's right to claim salary differentials has not prescribed, we must count three years prior to the filing of the complaint on May 31, 1995. Thus, only claims accruing prior to **May 31, 1992** have prescribed when the complaint was filed on May 31, 1995. Petitioner is entitled to her claims for salary differentials for the period May 31, 1992 to April 1993, or approximately eleven (11) months.[25]

We find that the NLRC correctly computed the salary differential due to petitioner at US$2,970.00 (US$370.00 as approved salary rate — US$100.00 as salary received = US$290 as underpaid salary per month x 11 months). However, it should be for the period May 31, 1992 to April 1993 and not May 1993 to April 1994 as erroneously stated in the NLRC's Decision.

A final note

This Court reminds local recruitment agencies that it is their bounden duty to guarantee our overseas workers that they are being recruited for *bona fide* jobs with *bona fide* employers. Local agencies should never allow themselves to be instruments of exploitation or oppression of their compatriots at the hands of foreign employers. Indeed, being the ones who profit most

[25] As an aside, this Court notes that in petitioner's complaint filed with the Labor Arbiter, she only claims underpayment of salaries and did not include nonpayment of salaries as one of her causes of action. Subsequently, in her position paper and other pleadings, petitioner asserts that she was not paid any salary at all from September 1991 to April 1993. However, under the NLRC Rules of Procedure, parties are barred from alleging or proving causes of action in the position paper that are not found/alleged in the complaint. Thus, the Labor Arbiter and the NLRC only granted petitioner salary differentials as she herself prayed for in her complaint.

from the exodus of Filipino workers to find greener pastures abroad, recruiters should be first to ensure the welfare of the very people that keep their industry alive.

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals dated August 7, 2002 and Resolution dated November 14, 2002 in CA-G.R. SP No. 59825 are *REVERSED AND SET ASIDE*. The Decision of the National Labor Relations Commission dated February 24, 2000 is *REINSTATED* with a qualification with respect to the award of salary differentials, which should be granted for the period May 31, 1992 to April 1993 and not May 1993 to April 1994.

SO ORDERED.

Carpio,[*] *Austria-Martinez,*[**] *Corona,* and *Carpio Morales,*[**] *JJ.,* concur.

Puno, C.J., on official leave.

SECOND DIVISION

[G.R. No. 158312. November 14, 2008]

JOHN DY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and The HONORABLE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(D) OF THE REVISED PENAL CODE, AS AMENDED; ELEMENTS. — Before an accused can be held

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[*] Acting Chairperson of the First Division as per Special Order No. 534.

[**] Additional Member as per Special Order No. 535.

liable for *estafa* under Article 315, paragraph 2 (d) of the Revised Penal Code, as amended by Republic Act No. 4885, the following elements must concur: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) insufficiency of funds to cover the check; and (3) damage to the payee thereof.

2. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; NEGOTIABLE INSTRUMENTS; THE TERM "ISSUE", DEFINED. — Section 191 of the Negotiable Instruments Law defines "issue" as the first delivery of an instrument, complete in form, to a person who takes it as a holder. Significantly, delivery is the final act essential to the negotiability of an instrument. Delivery denotes physical transfer of the instrument by the maker or drawer coupled with an intention to convey title to the payee and recognize him as a holder. It means more than handing over to another; it imports such transfer of the instrument to another as to enable the latter to hold it for himself.

3. ID.; ID.; ID.; BLANKS, WHEN MAY BE FILLED. — The pertinent provisions of Section 14 of the Negotiable Instruments Law are instructive: "SEC. 14. *Blanks; when may be filled*. — Where the instrument is wanting in any material particular, **the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks** therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount." . . . Hence, the law merely requires that the instrument be in the possession of a person other than the drawer or maker. From such possession, together with the fact that the instrument is wanting in a material particular, the law presumes agency to fill up the blanks. Because of this, the burden of proving want of authority or that the authority granted was exceeded, is placed on the person questioning such authority.

4. CRIMINAL LAW; ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(D) OF THE REVISED PENAL CODE, AS AMENDED; DAMAGE AND DECEIT; MUST BE ESTABLISHED WITH SATISFACTORY PROOF TO WARRANT CONVICTION. — [D]amage and deceit are

essential elements of the offense and must be established with satisfactory proof to warrant conviction. Deceit as an element of *estafa* is a specie of fraud. It is actual fraud which consists in any misrepresentation or contrivance where a person deludes another, to his hurt. There is deceit when one is misled — by guile, trickery or by other means — to believe as true what is really false.

5. ID.; ID.; GOOD FAITH, CONSIDERED A DEFENSE TO A CHARGE OF ESTAFA BY POSTDATING A CHECK. — In a number of cases, the Court has considered good faith as a defense to a charge of *estafa* by postdating a check. This good faith may be manifested by making arrangements for payment with the creditor and exerting best efforts to make good the value of the checks.

6. ID.; ID.; DECEIT; THE *PRIMA FACIE* PRESUMPTION OF DECEIT ARISES ONLY WHEN A CHECK IS DISHONORED FOR BEING DRAWN AGAINST INSUFFICIENT FUNDS OR CLOSED ACCOUNT AND NOT AGAINST UNCOLLECTED DEPOSIT. — Uncollected deposits are not the same as insufficient funds. The *prima facie* presumption of deceit arises only when a check has been dishonored for lack or insufficiency of funds. Notably, the law speaks of insufficiency of funds but not of uncollected deposits. Jurisprudence teaches that criminal laws are strictly construed against the Government and liberally in favor of the accused. Hence, x x x the law cannot be interpreted or applied in such a way as to expand its provision to encompass the situation of uncollected deposits because it would make the law more onerous on the part of the accused. Clearly, the *estafa* punished under Article 315, paragraph 2 (d) of the Revised Penal Code is committed when a check is dishonored for being drawn against insufficient funds or closed account, and not against uncollected deposit. Corollarily, the issuer of the check is not liable for *estafa* if the remaining balance and the uncollected deposit, which was duly collected, could satisfy the amount of the check when presented for payment.

7. ID.; VIOLATION OF BATAS PAMBANSA BILANG 22; ELEMENTS. — The elements of the offense penalized under B.P. Blg. 22 are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does

not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

8. ID.; ID.; THE GRAVAMEN OF THE OFFENSE IS THE ACT OF MAKING OR ISSUING A WORTHLESS CHECK OR A CHECK THAT IS DISHONORED UPON PRESENTMENT FOR PAYMENT. — [W]hat the law punishes is simply the issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating thereto. If inquiry into the reason for which the checks are issued, or the terms and conditions of their issuance is required, the public's faith in the stability and commercial value of checks as currency substitutes will certainly erode. Moreover, the gravamen of the offense under *B.P. Blg. 22* is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. The act effectively declares the offense to be one of *malum prohibitum*. The only valid query, then, is whether the law has been breached, *i.e.,* by the mere act of issuing a bad check, without so much regard as to the criminal intent of the issuer. Indeed, non-fulfillment of the obligation is immaterial.

9. ID.; ID.; ELEMENTS; THE KNOWLEDGE OF THE MAKER, DRAWER OR ISSUER THAT AT THE TIME OF ISSUE HE DOES NOT HAVE SUFFICIENT FUNDS IN OR CREDIT WITH THE DRAWEE BANK FOR THE PAYMENT OF SUCH CHECK IN FULL UPON ITS PRESENTMENT; *PRIMA FACIE* PRESUMPTION OF KNOWLEDGE OF INADEQUACY OF FUNDS, WHEN PRESENT. — [U]nder Section 2 of *B.P. Blg. 22*, petitioner was *prima facie* presumed to know of the inadequacy of his funds with the bank when he did not pay the value of the goods or make arrangements for their payment in full within five (5) banking days upon notice.

10. ID.; CIVIL LIABILITY; AN ACCUSED MAY BE HELD CIVILLY LIABLE WHERE THE FACTS ESTABLISHED BY THE EVIDENCE SO WARRANT. — [A]n accused may be held civilly liable where the facts established by the evidence so warrant. The rationale for this is simple. The criminal and civil liabilities of an accused are separate and distinct from

each other. One is meant to punish the offender while the other is intended to repair the damage suffered by the aggrieved party. So, for the purpose of indemnifying the latter, the offense need not be proved beyond reasonable doubt but only by preponderance of evidence.

APPEARANCES OF COUNSEL

M.A. Obias & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

QUISUMBING, *Acting C.J.*:

This appeal prays for the reversal of the Decision[1] dated January 23, 2003 and the Resolution[2] dated May 14, 2003 of the Court of Appeals in CA-G.R. CR No. 23802. The appellate court affirmed with modification the Decision[3] dated November 17, 1999 of the Regional Trial Court (RTC), Branch 82 of Quezon City, which had convicted petitioner John Dy of two counts of *estafa* in Criminal Cases Nos. Q-93-46711 and Q-93-46713, and two counts of violation of *Batas Pambansa Bilang* 22[4] (*B.P. Blg. 22*) in Criminal Cases Nos. Q-93-46712 and Q-93-46714.

The facts are undisputed:

Since 1990, John Dy has been the distributor of W.L. Food Products (W.L. Foods) in Naga City, Bicol, under the business name Dyna Marketing. Dy would pay W.L. Foods in either cash or check upon pick up of stocks of snack foods at the

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[1] *Rollo*, pp. 31-50. Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Oswaldo D. Agcaoili and Regalado E. Maambong, concurring.

[2] *Id.* at 51.

[3] Records, pp. 438-457. Penned by Presiding Judge Salvador C. Ceguera.

[4] AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES, approved April 3, 1979.

latter's branch or main office in Quezon City. At times, he would entrust the payment to one of his drivers.

On June 24, 1992, Dy's driver went to the branch office of W.L. Foods to pick up stocks of snack foods. He introduced himself to the checker, Mary Jane D. Maraca, who upon confirming Dy's credit with the main office, gave him merchandise worth ₱106,579.60. In return, the driver handed her a blank Far East Bank and Trust Company (FEBTC) Check with Check No. 553602 postdated July 22, 1992. The check was signed by Dy though it did not indicate a specific amount.

Yet again, on July 1, 1992, the same driver obtained snack foods from Maraca in the amount of ₱226,794.36 in exchange for a blank FEBTC Check with Check No. 553615 postdated July 31, 1992.

In both instances, the driver was issued an unsigned delivery receipt. The amounts for the purchases were filled in later by Evelyn Ong, accountant of W.L. Foods, based on the value of the goods delivered.

When presented for payment, FEBTC dishonored the checks for insufficiency of funds. Raul D. Gonzales, manager of FEBTC-Naga Branch, notified Atty. Rita Linda Jimeno, counsel of W.L. Foods, of the dishonor. Apparently, Dy only had an available balance of ₱2,000 as of July 22, 1992 and July 31, 1992.

Later, Gonzales sent Atty. Jimeno another letter[5] advising her that FEBTC Check No. 553602 for ₱106,579.60 was returned to the drawee bank for the reasons stop payment order and drawn against uncollected deposit (DAUD), and not because it was drawn against insufficient funds as stated in the first letter. Dy's savings deposit account ledger reflected a balance of ₱160,659.39 as of July 22, 1992. This, however, included a regional clearing check for ₱55,000 which he deposited on July 20, 1992, and which took five (5) banking days to clear. Hence, the inward check was drawn against the yet uncollected deposit.

[5] Records, p. 270.

When William Lim, owner of W.L. Foods, phoned Dy about the matter, the latter explained that he could not pay since he had no funds yet. This prompted the former to send petitioner a demand letter, which the latter ignored.

On July 16, 1993, Lim charged Dy with two counts of *estafa* under Article 315, paragraph 2(d)[6] of the Revised Penal Code in two Informations, which except for the dates and amounts involved, similarly read as follows:

That on or about the 24th day of June, 1992, in Quezon City, Philippines, the said accused, did then and there [willfully] and feloniously defraud W.L. PRODUCTS, a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at No. 531 Gen. Luis St., Novaliches, this City, in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he made to complainant to the effect that Far East Bank and Trust Co. check No. 553602 dated July 22, 1992 in the amount of ₱106,579.60, payable to W.L. Products is a good check and will be honored by the bank on its maturity date, and by means of other deceit of similar import, induced and succeeded in inducing the said complainant to receive and accept the aforesaid check in payment of snack foods, the said accused knowing fully well that all his manifestations and representations were false and untrue and were made solely for the purpose of obtaining, as in fact he did obtain the aforesaid snack

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[6] ART. 315. *Swindling* (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. *(As amended by Rep. Act No. 4885, approved June 17, 1967.)*

x x x x x x x x x

foods valued at ₱106,579.60 from said complainant as upon presentation of said check to the bank for payment, the same was dishonored and payment thereof refused for the reason stop payment and the said accused, once in possession of the aforesaid snack foods, with intent to defraud, [willfully], unlawfully and feloniously misapplied, misappropriated and converted the same or the value thereof to his own personal use and benefit, to the damage and prejudice of said W.L. Products, herein represented by RODOLFO BORJAL, in the aforementioned amount of ₱106,579.60, Philippine Currency.

Contrary to law.[7]

On even date, Lim also charged Dy with two counts of violation of *B.P. Blg. 22* in two Informations which likewise save for the dates and amounts involved similarly read as follows:

That on or about the 24th day of June, 1992, the said accused, did then and there [willfully], unlawfully and feloniously make or draw and issue to W.L. FOOD PRODUCTS to apply on account or for value a Far East Bank and Trust Co. Check No. 553602 dated July 22, 1992 payable to W.L. FOOD PRODUCTS in the amount of ₱106,579.60 Philippine Currency, said accused knowing fully well that at the time of issue he/she/they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented 90 days from the date thereof was subsequently dishonored by the drawee bank for the reason "Payment stopped" but the same would have been dishonored for insufficient funds had not the accused without any valid reason, ordered the bank to stop payment, the said accused despite receipt of notice of such dishonor, failed to pay said W.L. Food Products the amount of said check or to make arrangement for payment in full of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.[8]

On November 23, 1994, Dy was arrested in Naga City. On arraignment, he pleaded not guilty to all charges. Thereafter, the cases against him were tried jointly.

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[7] Records, pp. 2, 14-15.

[8] *Id.* at 8, 20-21.

On November 17, 1999 the RTC convicted Dy on two counts each of *estafa* and violation of *B.P. Blg. 22*. The trial court disposed of the case as follows:

> WHEREFORE, accused JOHN JERRY DY ALDEN (JOHN DY) is hereby found GUILTY beyond reasonable doubt of swindling (ESTAFA) as charged in the Informations in Criminal Case No. 93-46711 and in Criminal Case No. Q-93-46713, respectively. Accordingly, after applying the provisions of the Indeterminate Sentence Law and P.D. No. 818, said accused is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, in Criminal Case No. Q-93-46711 and of ten (10) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to thirty (30) years of *reclusion perpetua*, as maximum, in Criminal Case No. Q-93-46713.
>
> Likewise, said accused is hereby found GUILTY beyond reasonable doubt of Violation of B.P. 22 as charged in the Informations in Criminal Case No. Q-93-46712 and in Criminal Case No. Q-93-46714 and is accordingly sentenced to imprisonment of one (1) year for each of the said offense and to pay a fine in the total amount of ₱333,373.96, with subsidiary imprisonment in case of insolvency.
>
> FINALLY, judgment is hereby rendered in favor of private complainant, W. L. Food Products, herein represented by Rodolfo Borjal, and against herein accused JOHN JERRY DY ALDEN (JOHN DY), ordering the latter to pay to the former the total sum of ₱333,373.96 plus interest thereon at the rate of 12% per annum from September 28, 1992 until fully paid; and, (2) the costs of this suit.
>
> SO ORDERED.[9]

Dy brought the case to the Court of Appeals. In the assailed Decision of January 23, 2003, the appellate court affirmed the RTC. It, however, modified the sentence and deleted the payment of interests in this wise:

> WHEREFORE, in view of the foregoing, the decision appealed from is hereby **AFFIRMED with MODIFICATION**. In **Criminal Case No. Q-93-46711 (for estafa)**, the accused-appellant JOHN JERRY DY ALDEN (JOHN DY) is hereby sentenced to suffer an

[9] *Id.* at 457.

indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum plus eight (8) years in excess of [₱]22,000.00. In **Criminal Case No. Q-93-46712 (for violation of BP 22)**, accused-appellant is sentenced to suffer an imprisonment of one (1) year and to indemnify W.L. Food Products, represented by Rodolfo Borjal, the amount of ONE HUNDRED SIX THOUSAND FIVE HUNDRED SEVENTY NINE PESOS and 60/100 ([₱]106,579.60). In **Criminal Case No. Q-93-46713 (for estafa)**, accused-appellant is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of *prision mayor* as minimum to thirty (30) years as maximum. Finally, in **Criminal Case No. Q-93-46714 (for violation of BP 22)**, accused-appellant is sentenced to suffer an imprisonment of one (1) year and to indemnify W.L. Food Products, represented by Rodolfo Borjal, the amount of TWO HUNDRED TWENTY SIX THOUSAND SEVEN HUNDRED NINETY FOUR PESOS AND 36/100 ([₱]226,794.36).

SO ORDERED.[10]

Dy moved for reconsideration, but his motion was denied in the Resolution dated May 14, 2003.

Hence, this petition which raises the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT OF ESTAFA ON TWO (2) COUNTS?

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT OF VIOLATION OF BP 22 ON TWO (2) COUNTS?

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AWARDING DAMAGES TO PRIVATE

[10] *Rollo*, p. 49.

COMPLAINANT, W.L. FOOD PRODUCTS, THE TOTAL SUM OF [₱]333,373.96?[11]

Essentially, the issue is whether John Dy is liable for *estafa* and for violation of *B.P. Blg. 22*.

First, is petitioner guilty of *estafa?*

Mainly, petitioner contends that the checks were ineffectively issued. He stresses that not only were the checks blank, but also that W.L. Foods' accountant had no authority to fill the amounts. Dy also claims failure of consideration to negate any obligation to W.L. Foods. Ultimately, petitioner denies having deceived Lim inasmuch as only the two checks bounced since he began dealing with him. He maintains that it was his long established business relationship with Lim that enabled him to obtain the goods, and not the checks issued in payment for them. Petitioner renounces personal liability on the checks since he was absent when the goods were delivered.

The Office of the Solicitor General (OSG), for the State, avers that the delivery of the checks by Dy's driver to Maraca, constituted valid issuance. The OSG sustains Ong's *prima facie* authority to fill the checks based on the value of goods taken. It observes that nothing in the records showed that W.L. Foods' accountant filled up the checks in violation of Dy's instructions or their previous agreement. Finally, the OSG challenges the present petition as an inappropriate remedy to review the factual findings of the trial court.

We find that the petition is partly meritorious.

Before an accused can be held liable for *estafa* under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885,[12] the following elements must concur: (1) postdating or issuance of a check in payment of an obligation

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[11] *Id.* at 15.

[12] AN ACT TO AMEND SECTION TWO, PARAGRAPH (D), ARTICLE THREE HUNDRED FIFTEEN OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND FIFTEEN, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, approved June 17, 1967.

contracted at the time the check was issued; (2) insufficiency of funds to cover the check; and (3) damage to the payee thereof.[13] These elements are present in the instant case.

Section 191 of the Negotiable Instruments Law[14] defines "issue" as the first delivery of an instrument, complete in form, to a person who takes it as a holder. Significantly, delivery is the final act essential to the negotiability of an instrument. Delivery denotes physical transfer of the instrument by the maker or drawer coupled with an intention to convey title to the payee and recognize him as a holder.[15] It means more than handing over to another; it imports such transfer of the instrument to another as to enable the latter to hold it for himself.[16]

In this case, even if the checks were given to W.L. Foods in blank, this alone did not make its issuance invalid. When the checks were delivered to Lim, through his employee, he became a holder with *prima facie* authority to fill the blanks. This was, in fact, accomplished by Lim's accountant.

The pertinent provisions of Section 14 of the Negotiable Instruments Law are instructive:

> SEC. 14. *Blanks; when may be filled*. — Where the instrument is wanting in any material particular, **the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks** therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. . . . (Emphasis supplied.)

Hence, the law merely requires that the instrument be in the possession of a person other than the drawer or maker. From

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[13] *People v. Romero*, G.R. No. 112985, April 21, 1999, 306 SCRA 90, 96.

[14] Also known as ACT No. 2031. AN ACT ENTITLED "THE NEGOTIABLE INSTRUMENTS LAW," enacted February 3, 1911.

[15] *De la Victoria v. Burgos*, G.R. No. 111190, June 27, 1995, 245 SCRA 374, 379.

[16] *Lewis County et al. v. State Bank of Peck*, 170 Pacific Reporter 98, 100 (1918), citing BIGELOW, BILLS, NOTES AND CHECKS, 2nd Ed., p. 13.

such possession, together with the fact that the instrument is wanting in a material particular, the law presumes agency to fill up the blanks.[17] Because of this, the burden of proving want of authority or that the authority granted was exceeded, is placed on the person questioning such authority.[18] Petitioner failed to fulfill this requirement.

Next, petitioner claims failure of consideration. Nevertheless, in a letter [19] dated November 10, 1992, he expressed willingness to pay W.L. Foods, or to replace the dishonored checks. This was a clear acknowledgment of receipt of the goods, which gave rise to his duty to maintain or deposit sufficient funds to cover the amount of the checks.

More significantly, we are not swayed by petitioner's arguments that the single incident of dishonor and his absence when the checks were delivered belie fraud. Indeed damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction.[20] Deceit as an element of *estafa* is a specie of fraud. It is actual fraud which consists in any misrepresentation or contrivance where a person deludes another, to his hurt. There is deceit when one is misled — by guile, trickery or by other means — to believe as true what is really false.[21]

Prima facie evidence of deceit was established against petitioner with regard to FEBTC Check No. 553615 which was dishonored for insufficiency of funds. The letter[22] of petitioner's counsel

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[17] I A.F. AGBAYANI, *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES*, 168 (1987 ed.).

[18] J.C. CAMPOS, JR. AND M.C. LOPEZ-CAMPOS, *NOTES AND SELECTED CASES ON NEGOTIABLE INSTRUMENTS LAW*, 351 (3rd ed., 1971).

[19] Records, p. 43.

[20] *People v. Ojeda*, G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436, 445; *People v. Dimalanta*, G.R. No. 157039, October 1, 2004, 440 SCRA 55, 61-62.

[21] *People v. Romero*, *supra* note 13 at 97.

[22] Records, p. 43.

dated November 10, 1992 shows beyond reasonable doubt that petitioner received notice of the dishonor of the said check for insufficiency of funds. Petitioner, however, failed to deposit the amounts necessary to cover his check within three banking days from receipt of the notice of dishonor. Hence, as provided for by law,[23] the presence of deceit was sufficiently proven.

Petitioner failed to overcome the said proof of deceit. The trial court found no pre-existing obligation between the parties. The existence of prior transactions between Lim and Dy alone did not rule out deceit because each transaction was separate, and had a different consideration from the others. Even as petitioner was absent when the goods were delivered, by the principle of agency, delivery of the checks by his driver was deemed as his act as the employer. The evidence shows that as a matter of course, Dy, or his employee, would pay W.L. Foods in either cash or check upon pick up of the stocks of snack foods at the latter's branch or main office. Despite their two-year standing business relations prior to the issuance of the subject check, W.L Foods employees would not have parted with the stocks were it not for the simultaneous delivery of the check issued by petitioner.[24] Aside from the existing business relations between petitioner and W.L. Foods, the primary inducement for the latter to part with its stocks of snack foods was the issuance of the check in payment of the value of the said stocks.

In a number of cases,[25] the Court has considered good faith as a defense to a charge of *estafa* by postdating a check. This

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[23] ART. 315. *Swindling* (*estafa*). —

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(d) x x x **The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.** *(As amended by Rep. Act No. 4885, approved June 17, 1967.)* (Emphasis supplied.)

[24] TSN, July 19, 1995, pp. 507, 516.

[25] *People v. Ojeda*, G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436; *People v. Dimalanta*, G.R. No. 157039, October 1, 2004, 440 SCRA 55.

good faith may be manifested by making arrangements for payment with the creditor and exerting best efforts to make good the value of the checks. In the instant case petitioner presented no proof of good faith. Noticeably absent from the records is sufficient proof of sincere and best efforts on the part of petitioner for the payment of the value of the check that would constitute good faith and negate deceit.

With the foregoing circumstances established, we find petitioner guilty of *estafa* with regard to FEBTC Check No. 553615 for ₱226,794.36.

The same, however, does not hold true with respect to FEBTC Check No. 553602 for ₱106,579.60. This check was dishonored for the reason that it was drawn against uncollected deposit. Petitioner had ₱160,659.39 in his savings deposit account ledger as of July 22, 1992. We disagree with the conclusion of the RTC that since the balance included a regional clearing check worth ₱55,000 deposited on July 20, 1992, which cleared only five (5) days later, then petitioner had inadequate funds in this instance. Since petitioner technically and retroactively had sufficient funds at the time Check No. 553602 was presented for payment then the second element (insufficiency of funds to cover the check) of the crime is absent. Also there is no *prima facie* evidence of deceit in this instance because the check was not dishonored for lack or insufficiency of funds. Uncollected deposits are not the same as insufficient funds. The *prima facie* presumption of deceit arises only when a check has been dishonored for lack or insufficiency of funds. Notably, the law speaks of insufficiency of funds but not of uncollected deposits. Jurisprudence teaches that criminal laws are strictly construed against the Government and liberally in favor of the accused.[26] Hence, in the instant case, the law cannot be interpreted or applied in such a way as to expand its provision to encompass the situation of uncollected deposits because it would make the law more onerous on the part of the accused.

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[26] See *U.S. v. Abad Santos*, 36 Phil. 243 (1917); *People v. Yu Hai*, 99 Phil. 725, 728 (1956).

Clearly, the *estafa* punished under Article 315, paragraph 2(d) of the Revised Penal Code is committed when a check is dishonored for being drawn against insufficient funds or closed account, and not against uncollected deposit.[27] Corollarily, the issuer of the check is not liable for *estafa* if the remaining balance and the uncollected deposit, which was duly collected, could satisfy the amount of the check when presented for payment.

Second, did petitioner violate *B.P. Blg. 22*?

Petitioner argues that the blank checks were not valid orders for the bank to pay the holder of such checks. He reiterates lack of knowledge of the insufficiency of funds and reasons that the checks could not have been issued to apply on account or for value as he did not obtain delivery of the goods.

The OSG maintains that the guilt of petitioner has been proven beyond reasonable doubt. It cites pieces of evidence that point to Dy's culpability: Maraca's acknowledgment that the checks were issued to W.L. Foods as consideration for the snacks; Lim's testimony proving that Dy received a copy of the demand letter; the bank manager's confirmation that petitioner had insufficient balance to cover the checks; and Dy's failure to settle his obligation within five (5) days from dishonor of the checks.

Once again, we find the petition to be meritorious in part.

The elements of the offense penalized under *B.P. Blg. 22* are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[28] The case at bar satisfies all these elements.

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[27] Cf. *Salazar v. People*, G.R. No. 151931, September 23, 2003, 411 SCRA 598.

[28] *Navarro v. Court of Appeals*, G.R. Nos. 112389-90, August 1, 1994, 234 SCRA 639, 643-644.

During the joint pre-trial conference of this case, Dy admitted that he issued the checks, and that the signatures appearing on them were his.[29] The facts reveal that the checks were issued in blank because of the uncertainty of the volume of products to be retrieved, the discount that can be availed of, and the deduction for bad orders. Nevertheless, we must stress that what the law punishes is simply the issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating thereto.[30] If inquiry into the reason for which the checks are issued, or the terms and conditions of their issuance is required, the public's faith in the stability and commercial value of checks as currency substitutes will certainly erode.[31]

Moreover, the gravamen of the offense under *B.P. Blg. 22* is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. The act effectively declares the offense to be one of *malum prohibitum*. The only valid query, then, is whether the law has been breached, *i.e.*, by the mere act of issuing a bad check, without so much regard as to the criminal intent of the issuer.[32] Indeed, non-fulfillment of the obligation is immaterial. Thus, petitioner's defense of failure of consideration must likewise fall. This is especially so since as stated above, Dy has acknowledged receipt of the goods.

On the second element, petitioner disputes notice of insufficiency of funds on the basis of the check being issued in blank. He relies on *Dingle v. Intermediate Appellate Court*[33] and *Lao v. Court of Appeals*[34] as his authorities. In both actions, however, the accused were co-signatories, who were neither

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[29] Records, p. 400.

[30] *Cruz v. Court of Appeals*, G.R. No. 108738, June 17, 1994, 233 SCRA 301, 307.

[31] *People v. Nitafan*, G.R. No. 75954, October 22, 1992, 215 SCRA 79, 85.

[32] *Cueme v. People*, G. R. No. 133325, June 30, 2000, 334 SCRA 795, 805.

[33] No. 75243, March 16, 1987, 148 SCRA 595.

[34] G. R. No. 119178, June 20, 1997, 274 SCRA 572.

apprised of the particular transactions on which the blank checks were issued, nor given notice of their dishonor. In the latter case, Lao signed the checks without knowledge of the insufficiency of funds, knowledge she was not expected or obliged to possess under the organizational structure of the corporation.[35] Lao was only a minor employee who had nothing to do with the issuance, funding and delivery of checks.[36] In contrast, petitioner was the proprietor of Dyna Marketing and the sole signatory of the checks who received notice of their dishonor.

Significantly, under Section 2[37] of *B.P. Blg. 22*, petitioner was *prima facie* presumed to know of the inadequacy of his funds with the bank when he did not pay the value of the goods or make arrangements for their payment in full within five (5) banking days upon notice. His letter dated November 10, 1992 to Lim fortified such presumption.

Undoubtedly, Dy violated *B.P. Blg. 22* for issuing FEBTC Check No. 553615. When said check was dishonored for insufficient funds and stop payment order, petitioner did not pay or make arrangements with the bank for its payment in full within five (5) banking days.

Petitioner should be exonerated, however, for issuing FEBTC Check No. 553602, which was dishonored for the reason DAUD or drawn against uncollected deposit. When the check was presented for payment, it was dishonored by the bank because the check deposit made by petitioner, which would make petitioner's bank account balance more than enough to cover the face value of the subject check, had not been collected by the bank.

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[35] *Id.* at 590.

[36] *Id.* at 596.

[37] SEC. 2. *Evidence of knowledge of insufficient funds*. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

In *Tan v. People*,[38] this Court acquitted the petitioner therein who was indicted under *B.P. Blg. 22*, upon a check which was dishonored for the reason DAUD, among others. We observed that:

> In the second place, even without relying on the credit line, petitioner's bank account covered the check she issued because even though there were some deposits that were still uncollected the deposits became "good" and the bank certified that the check was "funded."[39]

To be liable under Section 1[40] of *B.P. Blg. 22*, the check must be dishonored by the drawee bank for insufficiency of funds or credit or dishonored for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

In the instant case, even though the check which petitioner deposited on July 20, 1992 became good only five (5) days later, he was considered by the bank to retroactively have had ₱160,659.39 in his account on July 22, 1992. This was more than enough to cover the check he issued to respondent in the amount of ₱106,579.60. Under the circumstance obtaining in this case, we find the petitioner had issued the check, with full ability to abide by his commitment[41] to pay his purchases.

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[38] G. R. No. 141466, January 19, 2001, 349 SCRA 777.

[39] *Id.* at 781.

[40] SECTION 1. *Checks without sufficient funds.* — Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two hundred thousand pesos, or both such fine and imprisonment at the discretion of the court.

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[41] *Cf. Idos v. Court of Appeals*, G.R. No. 110782, September 25, 1998, 296 SCRA 194, 212.

Significantly, like Article 315 of the Revised Penal Code, *B.P. Blg. 22* also speaks only of insufficiency of funds and does not treat of uncollected deposits. To repeat, we cannot interpret the law in such a way as to expand its provision to encompass the situation of uncollected deposits because it would make the law more onerous on the part of the accused. Again, criminal statutes are strictly construed against the Government and liberally in favor of the accused.[42]

As regards petitioner's civil liability, this Court has previously ruled that an accused may be held civilly liable where the facts established by the evidence so warrant.[43] The rationale for this is simple. The criminal and civil liabilities of an accused are separate and distinct from each other. One is meant to punish the offender while the other is intended to repair the damage suffered by the aggrieved party. So, for the purpose of indemnifying the latter, the offense need not be proved beyond reasonable doubt but only by preponderance of evidence.[44]

We therefore sustain the appellate court's award of damages to W.L. Foods in the total amount of ₱333,373.96, representing the sum of the checks petitioner issued for goods admittedly delivered to his company.

As to the appropriate penalty, petitioner was charged with *estafa* under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818[45] (P.D. No. 818).

Under Section 1[46] of P.D. No. 818, if the amount of the fraud exceeds ₱22,000, the penalty of *reclusión temporal* is

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[42] See *U.S. v. Abad Santos, supra* note 26; *People v. Yu Hai, supra* note 26.

[43] *Eusebio-Calderon v. People*, G.R. No. 158495, October 21, 2004, 441 SCRA 137, 147.

[44] *Sapiera v. Court of Appeals*, G.R. No. 128927, September 14, 1999, 314 SCRA 370, 379.

[45] AMENDING ARTICLE 315 OF THE REVISED PENAL CODE BY INCREASING THE PENALTIES FOR ESTAFA COMMITTED BY MEANS OF BOUNCING CHECKS, done October 22, 1975.

[46] SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of

imposed in its maximum period, adding one year for each additional ₱10,000 but the total penalty shall not exceed thirty (30) years, which shall be termed *reclusión perpetua*.[47] *Reclusión perpetua* is not the prescribed penalty for the offense, but merely describes the penalty actually imposed on account of the amount of the fraud involved.

WHEREFORE, the petition is *PARTLY GRANTED*. John Dy is hereby *ACQUITTED* in Criminal Case No. Q-93-46711 for *estafa*, and Criminal Case No. Q-93-46712 for violation of *B.P. Blg. 22*, but he is *ORDERED* to pay W.L. Foods the amount of ₱106,579.60 for goods delivered to his company.

In Criminal Case No. Q-93-46713 for *estafa*, the Decision of the Court of Appeals is *AFFIRMED with MODIFICATION*. Petitioner is sentenced to suffer an indeterminate penalty of twelve (12) years of *prisión mayor*, as minimum, to thirty (30) years of *reclusión perpetua*, as maximum.

In Criminal Case No. Q-93-46714 for violation of *B.P. Blg. 22*, the Decision of the Court of Appeals is *AFFIRMED*, and John Dy is hereby sentenced to one (1) year imprisonment and ordered to indemnify W.L. Foods in the amount of ₱226,794.36.

SO ORDERED.

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

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the Revised Penal Code, as amended by Republic Act. No. 4885, shall be punished by:

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

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[47] *People v. Hernando*, G.R. No. 125214, October 28, 1999, 317 SCRA 617, 629.

SECOND DIVISION

[G.R. No. 158996. November 14, 2008]

SPOUSES FREDELICTO FLORES (deceased) and FELICISIMA FLORES, *petitioners, vs.* **SPOUSES DOMINADOR PINEDA and VIRGINIA SACLOLO, and FLORENCIO, CANDIDA, MARTA, GODOFREDO, BALTAZAR and LUCENA, all surnamed PINEDA, as heirs of the deceased TERESITA S. PINEDA, and UNITED DOCTORS MEDICAL CENTER, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; MEDICAL NEGLIGENCE CASE; ELEMENTS; EXPLAINED. — A **medical negligence case** is a type of claim to redress a wrong committed by a medical professional, that has caused bodily harm to or the death of a patient. There are four elements involved in a medical negligence case, namely: *duty, breach, injury, and proximate causation.* Duty refers to the standard of behavior which imposes restrictions on one's conduct. The standard in turn refers to the amount of competence associated with the proper discharge of the profession. A physician is expected to use at least the same level of care that any other reasonably competent doctor would use under the same circumstances. Breach of duty occurs when the physician fails to comply with these professional standards. If injury results to the patient as a result of this breach, the physician is answerable for negligence. As in any civil action, the burden to prove the existence of the necessary elements rests with the plaintiff. To successfully pursue a claim, the plaintiff must prove by preponderance of evidence that, **one**, the *physician either failed to do something which a reasonably prudent health care provider would have done, or that he did something that a reasonably prudent provider would not have done;* and **two**, *the failure or action caused injury to the patient.* Expert testimony is therefore essential since the factual issue of whether a physician or surgeon has exercised

the requisite degree of skill and care in the treatment of his patient is generally a matter of expert opinion.

2. ID.; ID.; ID.; ID.; ID.; THE CRITICAL FACTOR IN A MEDICAL NEGLIGENCE CASE IS PROOF OF THE CAUSAL CONNECTION BETWEEN THE NEGLIGENCE WHICH THE EVIDENCE ESTABLISHED AND THE PLAINTIFF'S INJURIES. — [T]he critical and clinching factor in a medical negligence case is proof of the **causal connection** between the negligence which the evidence established and the plaintiff's injuries; the plaintiff must plead and prove not only that he had been injured and defendant has been at fault, but also that the defendant's fault caused the injury. A verdict in a malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony.

3. ID.; DAMAGES; ACTUAL DAMAGES, DEATH INDEMNITY, MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARDED IN CASE AT BAR. — Both the trial and the appellate court awarded actual damages as compensation for the pecuniary loss the respondents suffered. The loss was presented in terms of the hospital bills and expenses the respondents incurred on account of Teresita's confinement and death. The settled rule is that a plaintiff is entitled to be compensated for proven pecuniary loss. This proof the respondents succesfully presented. Thus, we affirm the award of **actual damages** of ₱36,000.00 representing the hospital expenses the patient incurred. In addition to the award for actual damages, the respondent heirs of Teresita are likewise entitled to ₱50,000.00 as **death indemnity** pursuant to Article 2206 of the Civil Code, which states that "the amount of damages for death caused by a x x x *quasi-delict* shall be at least three thousand pesos, even though there may have been mitigating circumstances . x x x." *This is a question of law that the CA missed in its decision and which we now decide in the respondents' favor.* The same article allows the recovery of moral damages in case of death caused by a *quasi-delict* and enumerates the spouse, legitimate or illegitimate ascendants or descendants as the persons entitled thereto. Moral damages are designed to compensate the claimant for the injury suffered, that is, for the mental anguish, serious anxiety, wounded feelings which the respondents herein must have surely felt with the

unexpected loss of their daughter. We affirm the appellate court's award of ₱400,000.00 by way of **moral damages** to the respondents. We similarly affirm the grant of exemplary damages. Exemplary damages are imposed by way of example or correction for the public good. Because of the petitioner spouses' negligence in subjecting Teresita to an operation without first recognizing and addressing her diabetic condition, the appellate court awarded **exemplary damages** to the respondents in the amount of ₱100,000.00. Public policy requires such imposition to suppress the wanton acts of an offender. We therefore affirm the CA's award as an example to the medical profession and to stress that the public good requires stricter measures to avoid the repetition of the type of medical malpractice that happened in this case. With the award of exemplary damages, the grant of attorney's fees is legally in order. We therefore reverse the CA decision deleting these awards, and grant the respondents the amount of ₱100,000.00 as **attorney's fees** taking into consideration the legal route this case has taken.

APPEARANCES OF COUNSEL

Felipe M. Alpajora for petitioners.
Reynaldo P. Melendres for respondents.

D E C I S I O N

BRION, *J.*:

This petition involves a medical negligence case that was elevated to this Court through an appeal by *certiorari* under Rule 45 of the Rules of Court. The petition assails the Decision[1] of the Court of Appeals (*CA*) in CA G.R. CV No. 63234, which affirmed with modification the Decision[2] of the Regional Trial

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[1] Dated June 30, 2003 and penned by Justice Bienvenido Reyes, Jr., with Associate Justice Salvador Valdez and Associate Justice Danilo Pine, concurring; *rollo*, pp. 43-65.

[2] Dated September 21, 1998, and penned by Judge Lauro Sandoval; *id.*, pp. 66-97.

Court (*RTC*) of Nueva Ecija, Branch 37 in Civil Case No. SD-1233. The dispositive portion of the assailed CA decision states:

> WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court of Baloc, Sto. Domingo, Nueva Ecija, Branch 37 is hereby AFFIRMED but with modifications as follows:
>
> 1) Ordering defendant-appellants Dr. and Dra. Fredelicto A. Flores and the United Doctors Medical Center, Inc. to jointly and severally pay the plaintiff-appellees – heirs of Teresita Pineda, namely, Spouses Dominador Pineda and Virginia Saclolo and Florencio, Candida, Marta, Godofredo, Baltazar and Lucena, all surnamed Pineda, the sum of ₱400,000.00 by way of moral damages;
>
> 2) Ordering the above-named defendant-appellants to jointly and severally pay the above-named plaintiff-appellees the sum of ₱100,000.00 by way of exemplary damages;
>
> 3) Ordering the above-named defendant-appellants to jointly and severally pay the above-named plaintiff-appellees the sum of ₱36,000.00 by way of actual and compensatory damages; and
>
> 4) Deleting the award of attorney's fees and costs of suit.
>
> SO ORDERED.

While this case essentially involves questions of facts, we opted for the requested review in light of questions we have on the findings of negligence below, on the awarded damages and costs, and on the importance of this type of ruling on medical practice.[3]

BACKGROUND FACTS

Teresita Pineda (*Teresita*) was a 51-year old unmarried woman living in Sto. Domingo, Nueva Ecija. She consulted on April 17, 1987 her townmate, Dr. Fredelicto Flores, regarding her medical condition. She complained of general body weakness, loss of appetite, frequent urination and thirst, and on-and-off vaginal bleeding. Dr. Fredelicto initially interviewed the patient

[3] See: *Dela Cruz v. CA and People of the Philippines*, G.R. No. 105213, December 4, 1996, 265 SCRA 299; *Valenzuela v. CA*, G.R. No. 115024, February 7, 1996, 253 SCRA 303.

and asked for the history of her monthly period to analyze the probable cause of the vaginal bleeding. He advised her to return the following week or to go to the United Doctors Medical Center (*UDMC*) in Quezon City for a general check-up. As for her other symptoms, he suspected that Teresita might be suffering from diabetes and told her to continue her medications.[4]

Teresita did not return the next week as advised. However, when her condition persisted, she went to further consult Dr. Flores at his UDMC clinic on April 28, 1987, travelling for at least two hours from Nueva Ecija to Quezon City with her sister, Lucena Pineda. They arrived at UDMC at around 11:15 a.m.. Lucena later testified that her sister was then so weak that she had to lie down on the couch of the clinic while they waited for the doctor. When Dr. Fredelicto arrived, he did a routine check-up and ordered Teresita's admission to the hospital. In the admission slip, he directed the hospital staff to prepare the patient for an "on call" **D&C**[5] operation to be performed by his wife, Dr. Felicisima Flores (*Dr. Felicisima*). Teresita was brought to her hospital room at around 12 noon; the hospital staff forthwith took her blood and urine samples for the laboratory tests[6] which Dr. Fredelicto ordered.

At 2:40 p.m. of that same day, Teresita was taken to the operating room. It was only then that she met Dr. Felicisima, an obstetrician and gynecologist. The two doctors — Dr. Felicisima and Dr. Fredelicto, conferred on the patient's medical condition, while the resident physician and the medical intern gave Dr. Felicisima their own briefings. She also interviewed and conducted an internal vaginal examination of the patient which lasted for about 15 minutes. Dr. Felicisima thereafter called up the laboratory

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[4] TSN, January 14, 1992, pp. 5-8.

[5] ***"D&C"*** refers to **dilatation and curettage**, an operation in which the cervix of the uterus is expanded, using an instrument called dilator, and the lining (endometrium) of the uterus is lightly scraped with a curet (The Bantam Medical Dictionary, 5th ed., p. 192).

[6] The laboratory tests conducted were for complete blood count, urinalysis, stool examination, blood sugar examination, BUN determination, uric acid determination, and cholesterol determination; *rollo*, p. 12.

for the results of the tests. At that time, only the results for the blood sugar (*BS*), uric acid determination, cholesterol determination, and complete blood count (*CBC*) were available. Teresita's BS count was 10.67mmol/l[7] and her CBC was 109g/l.[8]

Based on these preparations, Dr. Felicisima proceeded with the D&C operation with Dr. Fredelicto administering the general anesthesia. The D&C operation lasted for about 10 to 15 minutes. By 3:40 p.m., Teresita was wheeled back to her room.

A day after the operation (or on April 29, 1987), Teresita was subjected to an ultrasound examination as a confirmatory procedure. The results showed that she had an enlarged uterus and *myoma uteri*.[9] Dr. Felicisima, however, advised Teresita that she could spend her recovery period at home. Still feeling weak, Teresita opted for hospital confinement.

Teresita's complete laboratory examination results came only on that day (April 29, 1987). Teresita's urinalysis showed a three plus sign (+++) indicating that the sugar in her urine was very high. She was then placed under the care of Dr. Amado Jorge, an internist.

By April 30, 1987, Teresita's condition had worsened. She experienced difficulty in breathing and was rushed to the intensive care unit. Further tests confirmed that she was suffering from **Diabetes Mellitus Type II**.[10] Insulin was administered on the

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[7] "mmol/l" refers to millimoles per liter of blood; the normal *fasting* blood sugar is between 3.9 to 6.05mmol/l; *infra* note 19.

[8] "g/l" refers to grams per liter of blood; the normal CBC count is 120 to 170 g/l.

[9] Myoma of the uterus; myoma is a benign tumor of muscle (The Bantam Medical Dictionary, 5th ed., p. 437).

[10] **Diabetes** is a condition where the cells of the body cannot metabolize sugar properly due to a total or relative lack of insulin. The body then breaks down its own fat, proteins, and glycogen to produce sugar, resulting in high sugar levels in the blood (otherwise known as **hyperglycemia**, *infra* note 26), with excess by-products called ketones being produced by the liver. (Dr. Gordon French, *Clinical Management of Diabetes Mellitus During Anesthesia and Surgery*, http://www.nda.ox.ac.uk/wfsa/html/u11/u1113_01.htm, last visited September 21, 2008).

patient, but the medication might have arrived too late. Due to complications induced by diabetes, Teresita died in the morning of May 6, 1987.[11]

Believing that Teresita's death resulted from the negligent handling of her medical needs, her family (*respondents*) instituted an action for damages against Dr. Fredelicto Flores and Dr. Felicisima Flores (collectively referred to as the *petitioner spouses*) before the RTC of Nueva Ecija.

The RTC ruled in favor of Teresita's family and awarded actual, moral, and exemplary damages, plus attorney's fees and costs.[12] The CA affirmed the judgment, but modified the amount of damages awarded and deleted the award for attorney's fees and costs of suit.[13]

Through this petition for review on *certiorari*, the petitioner spouses — Dr. Fredelicto (now deceased) and Dr. Felicisima Flores — allege that the RTC and CA committed a reversible error in finding them liable through negligence for the death of Teresita Pineda.

ASSIGNMENT OF ERRORS

The petitioner spouses contend that they exercised due care and prudence in the performance of their duties as medical professionals. They had attended to the patient to the best of their abilities and undertook the management of her case based on her complaint of an on-and-off vaginal bleeding. In addition, they claim that nothing on record shows that the death of Teresita could have been averted had they employed means other than what they had adopted in the ministration of the patient.

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[11] Records, Volume II, Exhibit "B" (Death Certificate); TSN, July 12, 1988, pp. 5-8.

[12] The amount of ₱36,000.00 by way of actual and compensatory damages; ₱1,000,000.00 by way of moral damages; ₱500,000.00 by way of exemplary damages; ₱30,000.00 by way of attorney's fees, plus ₱1,000.00 fee per appearance; *rollo,* p. 97.

[13] *Supra* note 1.

THE COURT'S RULING

We do not find the petition meritorious.

The respondents' claim for damages is predicated on their allegation that the decision of the petitioner spouses to proceed with the D&C operation, notwithstanding Teresita's condition and the laboratory test results, amounted to negligence. On the other hand, the petitioner spouses contend that a D&C operation is the proper and accepted procedure to address vaginal bleeding — the medical problem presented to them. Given that the patient died after the D&C, the core issue is whether the decision to proceed with the D&C operation was an honest mistake of judgment or one amounting to negligence.

Elements of a Medical Negligence Case

A **medical negligence case** is a type of claim to redress a wrong committed by a medical professional, that has caused bodily harm to or the death of a patient. There are four elements involved in a medical negligence case, namely: *duty, breach, injury, and proximate causation.*[14]

Duty refers to the standard of behavior which imposes restrictions on one's conduct.[15] The standard in turn refers to the amount of competence associated with the proper discharge of the profession. A physician is expected to use at least the same level of care that any other reasonably competent doctor would use under the same circumstances. Breach of duty occurs when the physician fails to comply with these professional standards. If injury results to the patient as a result of this breach, the physician is answerable for negligence.[16]

As in any civil action, the burden to prove the existence of the necessary elements rests with the plaintiff.[17] To successfully

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[14] *Reyes v. Sisters of Mercy Hospital*, G.R. No. 130547, October 3, 2000, 341 SCRA 760.

[15] Martin, C.R.A., *Law Relating to Medical Malpractice* (2nd ed.), p. 361.

[16] 61 Am. Jur. 2d §200.

[17] REVISED RULES OF COURT, Rule 133, Section 1.

pursue a claim, the plaintiff must prove by preponderance of evidence that, **one**, the *physician either failed to do something which a reasonably prudent health care provider would have done, or that he did something that a reasonably prudent provider would not have done*; and **two**, *the failure or action caused injury to the patient*.[18] Expert testimony is therefore essential since the factual issue of whether a physician or surgeon has exercised the requisite degree of skill and care in the treatment of his patient is generally a matter of expert opinion.[19]

Standard of Care and Breach of Duty

D&C is the classic gynecologic procedure for the evaluation and possible therapeutic treatment for abnormal vaginal bleeding.[20] That this is the recognized procedure is confirmed by Drs. Salvador Nieto (*Dr. Nieto*) and Joselito Mercado (*Dr. Mercado*), the expert witnesses presented by the respondents:

> DR. NIETO:
>
> > [W]hat I know among obstetricians, if there is bleeding, they perform what we call D&C for diagnostic purposes.
>
> x x x x x x x x x
>
> Q: So are you trying to tell the Court that D&C can be a diagnostic treatment?
>
> A: Yes, sir. Any doctor knows this.[21]

Dr. Mercado, however, objected with respect to the time the D&C operation should have been conducted in Teresita's case. He opined that given the blood sugar level of Teresita, her diabetic condition should have been addressed first:

> Q: Why do you consider the time of performance of the D&C not appropriate?

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[18] *Professional Services, Inc. v. Agana*, G.R. No. 126297, January 31, 2007, 513 SCRA 478.

[19] *Reyes v. Sisters of Mercy Hospital*, G.R. No. 130547, October 3, 2000, 341 SCRA 760.

[20] *Sabiston Textbook of Surgery* (17th ed.), pp. 2255-2256.

[21] TSN, June 23, 1989, p. 31.

A: Because I have read the record and I have seen the urinalysis, [there is] spillage in the urine, and blood sugar was 10.67

Q: What is the significance of the spillage in the urine?

A: It is a sign that the blood sugar is very high.

Q: Does it indicate sickness?

A: 80 to 95% it means diabetes mellitus. The blood sugar was 10.67.

x x x x x x x x x

COURT: In other words, the operation conducted on the patient, your opinion, that it is inappropriate?

A: The timing of [when] the D&C [was] done, based on the record, in my personal opinion, that D&C should be postponed a day or two.[22]

The petitioner spouses countered that, at the time of the operation, there was nothing to indicate that Teresita was afflicted with diabetes: a blood sugar level of 10.67mmol/l did not necessarily mean that she was a diabetic considering that this was ***random blood sugar***;[23] there were other factors that might have caused Teresita's blood sugar to rise such as the taking of blood samples during lunchtime and while patient was being given intra-venous dextrose.[24] Furthermore, they claim that their principal concern was to determine the cause of and to stop the vaginal bleeding.

The petitioner spouses' contentions, in our view, miss several points. ***First***, as early as April 17, 1987, Teresita was already

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[22] TSN, September 18, 1990, pp. 2-4.

[23] *Random blood sugar* is defined without regard as to last meal, as distinguished from *fasting blood sugar* where the blood sample has been taken after patient has fasted for at least 8 hours. The current criteria for the diagnosis of diabetes mellitus emphasize that **fasting blood glucose is the most reliable and convenient test for identifying diabetes in asymptomatic individual.** (*Harrison's Principles of Internal Medicine*, 17th ed., p. 2277)

[24] TSN, March 5, 1992, p. 5; TSN, February 16, 1993, pp. 17-18.

suspected to be suffering from diabetes.[25] This suspicion again arose right before the D&C operation on April 28, 1987 when the laboratory result revealed Teresita's increased blood sugar level.[26] Unfortunately, the petitioner spouses did not wait for the full medical laboratory results before proceeding with the D&C, a fact that was never considered in the courts below. ***Second***, the petitioner spouses were duly advised that the patient was experiencing general body weakness, loss of appetite, frequent urination, and thirst — all of which are classic symptoms of diabetes.[27] When a patient exhibits symptoms typical of a particular disease, these symptoms should, at the very least, alert the physician of the possibility that the patient may be afflicted with the suspected disease:

> [Expert testimony for the plaintiff showed that] tests should have been ordered immediately on admission to the hospital in view of the symptoms presented, and that failure to recognize the existence of diabetes constitutes negligence.[28]

Third, the petitioner spouses cannot claim that their principal concern was the vaginal bleeding and should not therefore be held accountable for complications coming from other sources. This is a very narrow and self-serving view that even reflects on their competence.

Taken together, we find that reasonable prudence would have shown that diabetes and its complications were foreseeable harm that should have been taken into consideration by the petitioner spouses. **If a patient suffers from some disability that increases the magnitude of risk to him, that disability must be taken into account so long as it is or should have been known to**

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[25] TSN, February 28, 1989, p. 20; TSN, March 5, 1992, pp. 17, 20.

[26] TSN, September 27, 1994, p. 26; TSN, December 10, 1992, p. 8; TSN, February 28, 1989, p. 36.

[27] TSN, September 18, 1990, p. 6; *Harrison's Principles of Internal Medicine* (17th ed.), p. 2277.

[28] Solis, P., *Medical Jurisprudence* (1980 ed.), p. 141, citing *Hill v. Stewart*, 209 So 2d 809 Miss 1968.

the physician.[29] And when the patient is exposed to an increased risk, it is incumbent upon the physician to take commensurate and adequate precautions.

Taking into account Teresita's high blood sugar,[30] Dr. Mendoza opined that the attending physician should have postponed the D&C operation in order to conduct a confirmatory test to make a conclusive diagnosis of diabetes and to refer the case to an internist or diabetologist. This was corroborated by Dr. Delfin Tan (*Dr. Tan*), an obstetrician and gynecologist, who stated that the patient's diabetes should have been managed by an internist *prior to, during, and after* the operation.[31]

Apart from bleeding as a complication of pregnancy, vaginal bleeding is only rarely so heavy and life-threatening that urgent first-aid measures are required.[32] Indeed, the expert witnesses declared that a D&C operation on a hyperglycemic patient may be justified only when it is an emergency case — when there is profuse vaginal bleeding. In this case, we choose not to rely on the assertions of the petitioner spouses that there was profuse bleeding, not only because the statements were self-serving, but also because the petitioner spouses were inconsistent in their testimonies. Dr. Fredelicto testified earlier that on April 28, he personally saw the bleeding,[33] but later on said that he did not see it and relied only on Teresita's statement that she was bleeding.[34] He went on to state that he scheduled the D&C operation without conducting any physical examination on the patient.

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[29] Winfield and Jolowicz, *On Tort* (15th ed.), p. 181.

[30] High blood sugar is also known as **hyperglycemia**. It refers to a condition where there is excessive glucose in the bloodstream (that is, fasting blood sugar level > 6 mmol/l) due to insufficient insulin in blood and excessive carbohydrate intake; untreated, it may lead to diabetic coma. (*The Bantam Medical Dictionary*, 5th ed., p. 322)

[31] TSN, August 14, 1991, pp. 81-82.

[32] *Oxford Textbook of Surgery* (2nd ed.), Section 36.1 on Acute Vaginal Bleeding.

[33] TSN, January 14, 1992, p 33.

[34] TSN, December 10, 1992, p. 3.

The likely story is that although Teresita experienced vaginal bleeding on April 28, it was not sufficiently profuse to necessitate an immediate emergency D&C operation. Dr. Tan[35] and Dr. Mendoza[36] both testified that the medical records of Teresita failed to indicate that there was profuse vaginal bleeding. The claim that there was profuse vaginal bleeding although this was not reflected in the medical records strikes us as odd since the main complaint is vaginal bleeding. A medical record is the only document that maintains a long-term transcription of patient care and as such, its maintenance is considered a priority in hospital practice. Optimal record-keeping includes all patient inter-actions. The records should always be clear, objective, and up-to-date.[37] Thus, a medical record that does not indicate profuse medical bleeding speaks loudly and clearly of what it does not contain.

That the D&C operation was conducted principally to diagnose the cause of the vaginal bleeding further leads us to conclude that it was merely an elective procedure, not an emergency case. In an elective procedure, the physician must conduct a thorough pre-operative evaluation of the patient in order to adequately prepare her for the operation and minimize possible risks and complications. The internist is responsible for generating a comprehensive evaluation of all medical problems during the pre-operative evaluation.[38]

> The aim of pre-operative evaluation is not to screen broadly for undiagnosed disease, but rather to identify and quantify comorbidity that may impact on the operative outcome. This evaluation is driven by findings on history and physical examination suggestive of organ system dysfunction . . . **The goal is to uncover problem areas that may require further investigation or be amenable to preoperative optimization.**

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[35] TSN, August 14, 1991, pp. 57-58.

[36] TSN, October 18, 1990, p. 23.

[37] *Schwartz's Manual of Surgery* (8th ed.), pp. 246-147.

[38] *Kelly's Textbook of Internal Medicine* (4th ed.), Chapter 25 on Pre-operative Medical Evaluation.

If the preoperative evaluation uncovers significant comorbidity or evidence of poor control of an underlying disease process, consultation with an internist or medical specialist may be required to facilitate the work-up and direct management. In this process, communication between the surgeons and the consultants is essential to define realistic goals for this optimization process and to expedite surgical management.[39] [Emphasis supplied.]

Significantly, the evidence strongly suggests that the pre-operative evaluation was less than complete as the laboratory results were fully reported only on the day following the D&C operation. Dr. Felicisima only secured a telephone report of the preliminary laboratory result prior to the D&C. This preliminary report did not include the 3+ status of sugar in the patient's urine[40] — a result highly confirmatory of diabetes.

Because the D&C was merely an elective procedure, the patient's uncontrolled hyperglycemia presented a far greater risk than her on-and-off vaginal bleeding. The presence of hyperglycemia in a surgical patient is associated with poor clinical outcomes, and aggressive glycemic control positively impacts on morbidity and mortality.[41] Elective surgery in people with uncontrolled diabetes should preferably be scheduled *after* acceptable glycemic control has been achieved.[42] According to Dr. Mercado, this is done by administering insulin on the patient.[43]

The management approach in this kind of patients always includes insulin therapy in combination with dextrose and potassium infusion. Insulin x x x promotes glucose uptake by the muscle and fat cells

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[39] *Sabiston Textbook of Surgery* (17th ed.), p. 222, *supra* note 20.

[40] TSN, January 14, 1992, p. 19.

[41] Gordon French, MD, *Clinical Management of Diabetes Mellitus During Anesthesia and Surgery*, http://www.nda.ox.ac.uk/wfsa/html/u11/u1113_01.htm, last visited September 21, 2008.

[42] Samuel Dagogo-Jack, MD and K. George M.M. Alberti, *Management of Diabetes Mellitus in Surgical Patients*, http://spectrum.diabetesjournals.org/cgi/content/full/15/1/44, last visited September 21, 2008.

[43] TSN, September 18, 1990, pp. 5-6.

while decreasing glucose production by the liver xxx. The net effect is to lower blood glucose levels.[44]

The prudent move is to address the patient's hyperglycemic state immediately and promptly before any other procedure is undertaken. In this case, there was no evidence that insulin was administered on Teresita prior to or during the D&C operation. Insulin was only administered two days after the operation.

As Dr. Tan testified, the patient's hyperglycemic condition should have been managed not only before and during the operation, but also immediately after. Despite the possibility that Teresita was afflicted with diabetes, the possibility was casually ignored even in the post-operative evaluation of the patient; the concern, as the petitioner spouses expressly admitted, was limited to the complaint of vaginal bleeding. Interestingly, while the ultrasound test confirmed that Teresita had a myoma in her uterus, she was advised that she could be discharged a day after the operation and that her recovery could take place at home. This advice implied that a day after the operation and even after the complete laboratory results were submitted, the petitioner spouses still did not recognize any post-operative concern that would require the monitoring of Teresita's condition in the hospital.

The above facts, point only to one conclusion — that the petitioner spouses failed, as medical professionals, to comply with their duty to observe the standard of care to be given to hyperglycemic/diabetic patients undergoing surgery. Whether this breach of duty was the proximate cause of Teresita's death is a matter we shall next determine.

Injury and Causation

As previously mentioned, the critical and clinching factor in a medical negligence case is proof of the **causal connection** between the negligence which the evidence established and the

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[44] Raymond A. Plodkowski, MD and Steven V. Edelman, MD, *Pre-Surgical Evaluation of Diabetic Patients*, http://clinical.diabetesjournals.org/cgi/content/full/19/2/92, last visited September 21, 2008.

plaintiff's injuries;[45] the plaintiff must plead and prove not only that he had been injured and defendant has been at fault, but also that the defendant's fault caused the injury. A verdict in a malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony.[46]

The respondents contend that unnecessarily subjecting Teresita to a D&C operation without adequately preparing her, aggravated her hyperglycemic state and caused her untimely demise. The death certificate of Teresita lists down the following causes of death:

Immediate cause:	Cardiorespiratory arrest
Antecedent cause:	Septicemic shock, **ketoacidocis**
Underlying cause:	Diabetes Mellitus II
Other significant conditions contributing to death:	Renal Failure – Acute[47]

Stress, whether physical or emotional, is a factor that can aggravate diabetes; a D&C operation is a form of physical stress. Dr. Mendoza explained how surgical stress can aggravate the patient's hyperglycemia: when stress occurs, the diabetic's body, especially the autonomic system, reacts by secreting hormones which are counter-regulatory; she can have prolonged hyperglycemia which, if unchecked, could lead to death.[48] Medical literature further explains that if the blood sugar has become very high, the patient becomes comatose (diabetic coma). When this happens over several days, the body uses its own fat to produce energy, and the result is high levels of waste products (called ketones) in the blood and urine (called **diabetic ketoacidiosis,** a medical emergency with a significant mortality).[49]

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[45] 61 Am. Jur. §359, p. 527.

[46] 61 Am. Jur. 2d §359.

[47] Records, Volume II, Exh. "B".

[48] TSN, August 7, 1990, pp. 6-8.

[49] Gordon French, MD, *Clinical Management of Diabetes Mellitus During Anesthesia and Surgery*, http://www.nda.ox.ac.uk/wfsa/html/u11/u1113_01.htm, last visited September 21, 2008; Diabetic ketoacidosis is acute,

This was apparently what happened in Teresita's case; in fact, after she had been referred to the internist Dr. Jorge, laboratory test showed that her blood sugar level shot up to 14.0mmol/l, way above the normal blood sugar range. Thus, between the D&C and death was the diabetic complication that could have been prevented with the observance of standard medical precautions. The D&C operation and Teresita's death due to aggravated diabetic condition is therefore sufficiently established.

The trial court and the appellate court pinned the liability for Teresita's death on both the petitioner spouses and this Court finds no reason to rule otherwise. However, we clarify that Dr. Fredelicto's negligence is not solely the act of ordering an "on call" D&C operation when he was mainly an **anaesthesiologist** who had made a very cursory examination of the patient's vaginal bleeding complaint. Rather, it was his failure from the very start to identify and confirm, despite the patient's complaints and his own suspicions, that diabetes was a risk factor that should be guarded against, and his participation in the imprudent decision to proceed with the D&C operation despite his early suspicion and the confirmatory early laboratory results. The latter point comes out clearly from the following exchange during the trial:

Q: On what aspect did you and your wife consult [with] each other?

A: We discussed on the finding of the laboratory [results] because the hemoglobin was below normal, the blood sugar was elevated, so that we have to evaluate these laboratory results — what it means.

Q: So it was you and your wife who made the evaluation when it was phoned in?

A: Yes, sir.

Q: Did your wife, before performing D&C ask your opinion whether or not she can proceed?

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life-threatening, metabolic acidosis that represents the most extreme result of uncontrolled diabetes mellitus, *Kelly's Textbook on Internal Medicine* (4th ed.), Chapter 411 on Diabetic Ketoacidosis, *etc*.

A: Yes, anyway, she asked me whether we can do D&C based on my experience.

Q: And your answer was in the positive notwithstanding the elevation of blood sugar?

A: Yes, sir, it was both our disposition to do the D&C. [Emphasis supplied.][50]

If Dr. Fredelicto believed himself to be incompetent to treat the diabetes, not being an internist or a diabetologist (for which reason he referred Teresita to Dr. Jorge),[51] he should have likewise refrained from making a decision to proceed with the D&C operation since he was niether an obstetrician nor a gynecologist.

These findings lead us to the conclusion that the decision to proceed with the D&C operation, notwithstanding Teresita's hyperglycemia and without adequately preparing her for the procedure, was contrary to the standards observed by the medical profession. Deviation from this standard amounted to a breach of duty which resulted in the patient's death. Due to this negligent conduct, liability must attach to the petitioner spouses.

Liability of the Hospital

In the proceedings below, UDMC was the spouses Flores' co-defendant. The RTC found the hospital jointly and severally liable with the petitioner spouses, which decision the CA affirmed. In a Resolution dated August 28, 2006, this Court however denied UDMC's petition for review on *certiorari*. Since UDMC's appeal has been denied and they are not parties to this case, we find it unnecessary to delve on the matter. Consequently, the RTC's decision, as affirmed by the CA, stands.

Award of Damages

Both the trial and the appellate court awarded actual damages as compensation for the pecuniary loss the respondents suffered. The loss was presented in terms of the hospital bills and expenses

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[50] TSN, February 16, 1993, pp. 41-42.

[51] TSN, March 5, 1992, p. 9.

the respondents incurred on account of Teresita's confinement and death. The settled rule is that a plaintiff is entitled to be compensated for proven pecuniary loss.[52] This proof the respondents successfully presented. Thus, we affirm the award of **actual damages** of ₱36,000.00 representing the hospital expenses the patient incurred.

In addition to the award for actual damages, the respondent heirs of Teresita are likewise entitled to ₱50,000.00 as **death indemnity** pursuant to Article 2206 of the Civil Code, which states that "the amount of damages for death caused by a xxx *quasi-delict* shall be at least three thousand pesos,[53] even though there may have been mitigating circumstances xxx." *This is a question of law that the CA missed in its decision and which we now decide in the respondents' favor*.

The same article allows the recovery of moral damages in case of death caused by a *quasi-delict* and enumerates the spouse, legitimate or illegitimate ascendants or descendants as the persons entitled thereto. Moral damages are designed to compensate the claimant for the injury suffered, that is, for the mental anguish, serious anxiety, wounded feelings which the respondents herein must have surely felt with the unexpected loss of their daughter. We affirm the appellate court's award of ₱400,000.00 by way of **moral damages** to the respondents.

We similarly affirm the grant of exemplary damages. Exemplary damages are imposed by way of example or correction for the public good.[54] Because of the petitioner spouses' negligence in subjecting Teresita to an operation without first recognizing and addressing her diabetic condition, the appellate court awarded **exemplary damages** to the respondents in the amount of ₱100,000.00. Public policy requires such imposition to suppress the wanton acts of an offender.[55] We therefore affirm the CA's

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[52] CIVIL CODE, Article 2199.

[53] The amount has been increased to ₱50,000.00 according to jurisprudence.

[54] CIVIL CODE, Article 2229.

[55] *Civil Aeronautics Administration v. CA*, G.R. No. 51806, November 8, 1988, 167 SCRA 28.

award as an example to the medical profession and to stress that the public good requires stricter measures to avoid the repetition of the type of medical malpractice that happened in this case.

With the award of exemplary damages, the grant of attorney's fees is legally in order.[56] We therefore reverse the CA decision deleting these awards, and grant the respondents the amount of ₱100,000.00 as **attorney's fees** taking into consideration the legal route this case has taken.

WHEREFORE, we *AFFIRM* the Decision of the CA dated June 20, 2003 in CA G.R. CV No. 63234 finding petitioner spouses liable for negligent medical practice. We likewise *AFFIRM* the awards of actual and compensatory damages of ₱36,000.00; moral damages of ₱400,000.00; and exemplary damages of ₱100,000.00.

We *MODIFY* the CA Decision by additionally granting an award of ₱50,000.00 as death indemnity and by reversing the deletion of the award of attorney's fees and costs and restoring the award of ₱100,000.00 as attorney's fees. Costs of litigation are adjudged against petitioner spouses.

To summarize, the following awards shall be paid to the family of the late Teresita Pineda:

1. The sum of ₱36,000.00 by way of actual and compensatory damages;
2. The sum of ₱50,000.00 by way of death indemnity;
3. The sum of ₱400,000.00 by way of moral damages;
4. The sum of ₱100,000.00 by way of exemplary damages;
5. The sum of ₱100,000.00 by way of attorney's fees; and
6. Costs.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[56] CIVIL CODE, Article 2208 (2).

SECOND DIVISION

[G.R. No. 161946. November 14, 2008]

MEDARDO AG. CADIENTE, *petitioner, vs.* **BITHUEL MACAS,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; CONTRIBUTORY NEGLIGENCE; A PLAINTIFF WHO IS PARTLY RESPONSIBLE FOR HIS OWN INJURY SHOULD NOT BE ENTITLED TO RECOVER DAMAGES IN FULL. — Article 2179 of the Civil Code provides: "When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded." The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full, but must proportionately bear the consequences of his own negligence. The defendant is thus held liable only for the damages actually caused by his negligence.

2. ID.; ID.; ID.; ID.; THE REGISTERED OWNER OF ANY VEHICLE, EVEN IF HE HAD ALREADY SOLD IT TO SOMEONE ELSE, IS PRIMARILY RESPONSIBLE TO THE PUBLIC FOR WHATEVER DAMAGE OR INJURY THE VEHICLE MAY CAUSE. — [T]his Court has recently reiterated in *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*, that the registered owner of any vehicle, even if he had already sold it to someone else, is primarily responsible to the public for whatever damage or injury the vehicle may cause. We explained, ". . . Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done.

> A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership." In the case of *Villanueva v. Domingo*, we said that the policy behind vehicle registration is the easy identification of the owner who can be held responsible in case of accident, damage or injury caused by the vehicle. This is so as not to inconvenience or prejudice a third party injured by one whose identity cannot be secured.

APPEARANCES OF COUNSEL

Carlos A. Cadiente for petitioner.
Borre Zarate Barrios-Talaver for respondent.

D E C I S I O N

QUISUMBING, *Acting C.J.*:

For review on *certiorari* are the Decision[1] dated September 16, 2002 and the Resolution[2] dated December 18, 2003 of the Court of Appeals in CA-G.R. CV No. 64103, which affirmed the Decision[3] of the Regional Trial Court (RTC) of Davao City, Branch 10, in Civil Case No. 23,723-95.

The facts are undisputed.

Eyewitness Rosalinda Palero testified that on July 19, 1994, at about 4:00 p.m., at the intersection of Buhangin and San Vicente Streets in Davao City, 15-year old high school student Bithuel Macas, herein respondent, was standing on the shoulder

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[1] *Rollo*, pp. 23-29. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring.

[2] *Id.* at 30.

[3] *Id.* at 74-86. Penned by Judge Augusto V. Breva. Dated May 5, 1999.

of the road. She was about two and a half meters away from the respondent when he was bumped and run over by a Ford Fiera, driven by Chona C. Cimafranca. Rosalinda and another unidentified person immediately came to the respondent's rescue and told Cimafranca to take the victim to the hospital. Cimafranca rushed the respondent to the Davao Medical Center.

Dr. Hilario Diaz, the orthopedic surgeon who attended to the respondent, testified that the respondent suffered severe muscular and major vessel injuries, as well as open bone fractures in both thighs and other parts of his legs. In order to save his life, the surgeon had to amputate both legs up to the groins.[4]

Cimafranca had since absconded and disappeared. Records showed that the Ford Fiera was registered in the name of herein petitioner, Atty. Medardo Ag. Cadiente. However, Cadiente claimed that when the accident happened, he was no longer the owner of the Ford Fiera. He alleged that he sold the vehicle to Engr. Rogelio Jalipa on March 28, 1994,[5] and turned over the Certificate of Registration and Official Receipt to Jalipa, with the understanding that the latter would be the one to cause the transfer of the registration.

The victim's father, Samuel Macas, filed a complaint[6] for torts and damages against Cimafranca and Cadiente before the RTC of Davao City, Branch 10. Cadiente later filed a third-party complaint[7] against Jalipa.

In answer, Jalipa claimed that he was no longer the owner of the Ford Fiera at the time of the accident. He alleged that he sold the vehicle to Abraham Abubakar on June 20, 1994.[8] He thus filed a fourth-party complaint[9] against Abubakar.

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[4] TSN, April 10, 1996, pp. 7-10.

[5] Records, pp. 363-364.

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

[7] *Id.* at 73-76.

[8] *Id.* at 110-114.

[9] *Id.* at 121-123.

After trial, the court ruled:

WHEREFORE, judgment is rendered in favor of the plaintiff declaring Atty. Medardo Ag. Cadiente and Engr. Rogelio Jalipa jointly and severally liable for damages to the plaintiff for their own negligence as stated above, and ordering them to indemnify the plaintiff jointly and severally as follows:

(a) ₱300,000.00 as compensatory damages for the permanent and almost total disability being suffered by him;

(b) ₱150,000.00 for moral damages;

(c) ₱18,982.85 as reimbursement of medical expenses;

(d) ₱30,000.00 for attorney's fees; and

(e) costs of suit.

SO ORDERED.[10]

On appeal, the Court of Appeals held that the findings of the trial court were in accordance with the established facts and was supported by the evidence on record. Thus, it decreed as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED** and the decision of the Regional Trial Court of Davao City in Civil Case No. 23723-95 is hereby **AFFIRMED**.

SO ORDERED.[11]

From the aforequoted decision of the Court of Appeals and the subsequent denial of the motion for reconsideration, only Cadiente appealed to this Court.

The instant petition alleges that the Court of Appeals committed serious errors of law in affirming the decision of the trial court. Petitioner Cadiente raises the following as issues:

I.

WAS THERE … CONTRIBUTORY NEGLIGENCE ON THE PART OF THE INJURED PARTY?

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[10] *Rollo*, pp. 85-86.

[11] *Id.* at 29.

II.

ARE BOTH DEFENDANT CADIENTE AND THIRD-PARTY DEFENDANT JOINTLY AND SEVERALLY LIABLE TO THE INJURED PARTY?

III.

THE HONORABLE COURT OF APPEAL[S] COMMIT[T]ED GRAVE LEGAL ERROR IN ORDERING DEFENDANT CADIENTE AND THIRD-PARTY DEFENDANT JALIPA JOINTLY AND SEVERALLY LIABLE.[12]

Essentially, the issues to be resolved are: (1) Whether there was contributory negligence on the part of the victim; and (2) whether the petitioner and third-party defendant Jalipa are jointly and severally liable to the victim.

The petitioner contends that the victim's negligence contributed to his own mishap. The petitioner theorizes that if witness Rosalinda Palero, who was only two and a half meters away from the victim, was not hit by the Ford Fiera, then the victim must have been so negligent as to be bumped and run over by the said vehicle.[13]

The petitioner further argues that having filed a third-party complaint against Jalipa, to whom he had sold the Ford Fiera, the Court of Appeals should have ordered the latter to reimburse him for any amount he would be made to pay the victim, instead of ordering him solidarily liable for damages.[14]

The respondent, for his part, counters that the immediate and proximate cause of the injuries he suffered was the recklessly driven Ford Fiera, which was registered in the petitioner's name. He insists that when he was hit by the vehicle, he was standing on the uncemented portion of the highway, which was exactly where pedestrians were supposed to be.[15]

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[12] *Id.* at 15.

[13] *Id.* at 17.

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

[15] *Id.* at 112-113.

The respondent stresses that as the registered owner of the Ford Fiera which figured in the accident, the petitioner is primarily liable for the injury caused by the said vehicle. He maintains that the alleged sale of the vehicle to Jalipa was tainted with irregularity, which indicated collusion between the petitioner and Jalipa.[16]

After a careful consideration of the parties' submissions, we find the petition without merit.

Article 2179 of the Civil Code provides:

> When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full, but must proportionately bear the consequences of his own negligence. The defendant is thus held liable only for the damages actually caused by his negligence.[17]

In this case, records show that when the accident happened, the victim was standing on the shoulder, which was the uncemented portion of the highway. As noted by the trial court, the shoulder was intended for pedestrian use alone. Only stationary vehicles, such as those loading or unloading passengers may use the shoulder. Running vehicles are not supposed to pass through the said uncemented portion of the highway. However, the Ford Fiera in this case, without so much as slowing down, took off from the cemented part of the highway, inexplicably swerved to the shoulder, and recklessly bumped and ran over

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[16] *Id.* at 113-114.

[17] *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285, 293.

an innocent victim. The victim was just where he should be when the unfortunate event transpired.

Cimafranca, on the other hand, had no rightful business driving as recklessly as she did. The respondent cannot be expected to have foreseen that the Ford Fiera, erstwhile speeding along the cemented part of the highway would suddenly swerve to the shoulder, then bump and run him over. Thus, we are unable to accept the petitioner's contention that the respondent was negligent.

Coming now to the second and third issues, this Court has recently reiterated in *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*,[18] that the registered owner of any vehicle, even if he had already sold it to someone else, is primarily responsible to the public for whatever damage or injury the vehicle may cause. We explained,

> . . . Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership.[19]

In the case of *Villanueva v. Domingo*,[20] we said that the policy behind vehicle registration is the easy identification of the owner who can be held responsible in case of accident, damage or injury caused by the vehicle. This is so as not to

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[18] G.R. No. 162267, July 4, 2008, pp. 4-5.

[19] *Id.* at 5, citing *Erezo, et al. v. Jepte*, 102 Phil. 103 (1957).

[20] G.R. No. 144274, September 20, 2004, 438 SCRA 485.

inconvenience or prejudice a third party injured by one whose identity cannot be secured.[21]

Therefore, since the Ford Fiera was still registered in the petitioner's name at the time when the misfortune took place, the petitioner cannot escape liability for the permanent injury it caused the respondent, who had since stopped schooling and is now forced to face life with nary but two remaining limbs.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated September 16, 2002 and Resolution dated December 18, 2003 of the Court of Appeals in CA-G.R. CV No. 64103 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 167805. November 14, 2008]

ARNOLD STA. CATALINA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; *ESTAFA* UNDER ARTICLE 315, PARAGRAPH 1(B) OF THE REVISED PENAL CODE; ELEMENTS. — [T]he elements of *estafa* under Article 315, par. 1 (b) of the Revised Penal Code x x x are: (a) that money, goods or other personal property is received by the offender

[21] *Id.* at 494.

in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender; or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another.

2. REMEDIAL LAW; COURTS; NOT REQUIRED TO STATE IN ITS DECISION ALL THE FACTS FOUND IN THE RECORDS. — Courts are not required to state in its decision all the facts found in the records. It is enough that the court states the facts and the law on which its decision is based. The mere fact that no mention was made in the trial court's decision of the testimony of a witness does not necessarily mean said testimony was overlooked by the trial court in arriving at its decision. If it did not make reference of said testimony, it is because it was insignificant.

3. ID.; EVIDENCE; AFFIDAVIT OF DESISTANCE; BY ITSELF, AN AFFIDAVIT OF DESISTANCE IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION, ONCE THE ACTION HAS BEEN INSTITUTED IN COURT; CASE AT BAR. — [T]he Affidavit of Desistance submitted by Ballecer will not justify the dismissal of the action. By itself, an Affidavit of Desistance is not a ground for the dismissal of an action, once the action has been instituted in court. Here, Ballecer made the so-called pardon of the petitioner after the institution of the action. He made the Affidavit of Desistance only on October 25, 1999 — more than two years after the trial court had rendered its decision. The Court attaches no persuasive value to a desistance especially when executed as an afterthought. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who had given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Moreover, if we allow the dismissal of the case in view of Ballecer's Affidavit of Desistance, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.

APPEARANCES OF COUNSEL

Dominguez & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *Acting C.J.*:

This petition for review on *certiorari* seeks to reverse and set aside the Decision[1] dated October 26, 2004 and the Resolution[2] dated April 14, 2005 of the Court of Appeals in CA-G.R. CR No. 21877.

Petitioner was charged before the Regional Trial Court, Branch 63, Makati City, with the crime of *estafa* defined under Article 315, paragraph 1(b)[3] of the Revised Penal Code. The Information[4] reads:

x x x x x x x x x

That [o]n or about and sometime during the month of February 1988, in the Municipality of Makati, Metro Manila, Philippines and

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[1] CA *rollo*, pp. 164-175. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao, concurring.

[2] *Id.* at 191-192.

[3] ART. 315. *Swindling* (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

x x x x x x x x x

[4] Records, pp. 1-2. Dated March 10, 1989.

within the jurisdiction of this Honorable Court, the said accused, received in trust from LORENZO B. BALLECER the amount of ₱100,000.00 for the purpose of opening a letter of credit for the intended importation of jute sacks from China with the express obligation on the part of the accused of returning the same if the transaction does not materialize, but the accused once in possession of the said amount far from complying with his obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously appropriate, apply and convert to his own personal use and benefit the said amount and despite demands, failed and refused and still fails and refuses to return the same to said Lorenzo B. Ballecer, to the damage and prejudice of the latter in the aforesaid amount of ₱100,000.00.

CONTRARY TO LAW.

Petitioner pleaded not guilty upon arraignment. Thereafter, a trial on the merits ensued.

The following facts were established.

Private complainant Lorenzo B. Ballecer was the president of Sunrise Industries Development, Incorporated while his friend, herein petitioner, was the president of Century United Marketing and Trading Corporation.[5]

Sometime in February 1988, Ballecer entered into a joint business venture with petitioner involving importation of jute sacks from China. Petitioner intimated to Ballecer that he could secure the jute sacks from China through a company in Hongkong which would act as his agent. Petitioner also told Ballecer that he had a ready buyer in the Philippines named Saugus Enterprises which was willing to buy the jute sacks at ₱12.25 per piece. Convinced, Ballecer ordered through petitioner one container load of jute sacks with the total cost of ₱137,000.[6]

After the order was made, petitioner told Ballecer to open the importation's letter of credit. Accordingly, Ballecer and petitioner proceeded to Citytrust Bank to open said letter of

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[5] CA *rollo*, p. 165.

[6] *Id.*

credit. However, before the letter of credit could be opened, the bank required them to submit the supporting customs documents and to post a marginal deposit of ₱100,000. Ballecer then asked petitioner to accompany him to United Coconut Planters Bank to encash a check worth ₱100,000.[7]

After the encashment of the check, the two returned to Citytrust Bank. However, they arrived after banking hours, so the letter of credit could no longer be opened. Petitioner then suggested that the money be deposited in his account at Citytrust instead. Ballecer agreed.[8] By way of acknowledgment, petitioner executed a document which reads:

x x x x x x x x x

This is to certify that I have received from LORENZO B. BALLECER the amount of ONE HUNDRED THOUSAND PESOS ONLY (₱100,000.00) and deposited in my CITYTRUST BANK Account No. 00035016566 for use in the opening of a Letter of Credit at said bank for the importation of 20,000 pcs. of jute sacks from Hongkong and that the same will be returned to him if transaction does not materialize.[9] (Underscoring supplied.)

While preparing the supporting customs documents for the letter of credit, Ballecer found that the cost of the jute sacks was not $0.15 but $0.62 or ₱16.15 per piece.[10] Realizing that his business venture was a losing proposition, Ballecer cancelled the importation and asked petitioner to return the ₱100,000. Petitioner, however, failed to return the money despite repeated verbal and formal demands.

In defense, petitioner testified that he did not misappropriate the ₱100,000. Petitioner claimed that the said money was spent and used for the office expenses, salaries and miscellaneous expenses of the office which Ballecer and petitioner occupy and share together. He further testified that when the check

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[7] *Id.*

[8] *Id.* at 166.

[9] Records, p. 166.

[10] CA *rollo*, p. 166.

was given to Ballecer, they encashed it and entered into an oral agreement that whatever profit they will realize from their joint business venture shall be shared equally after deducting all expenses.[11]

On March 11, 1997, the trial court convicted the petitioner of the crime charged. The decretal portion of the Decision[12] reads:

> Finding all the elements necessary to qualify an act as estafa to be present, the court finds the accused ARNOLD STA. CATALINA, "GUILTY" beyond reasonable doubt. A judgment of conviction is rendered against him and he is to suffer the penalty of from 2 years 11 months and 11 days of *prision correc[c]ional* in its minimum and mediu[m] period, to 8 years of . . . *prision mayor* and 1 year for each additional ₱10,000.00 in excess of ₱22,000.00 as provided for under Art. 315 par. 1. Likewise, accused is ordered to pay civil indemnity in the amount of ₱100,000.00 representing the amount he received from private complainant and which he deposited in his own account.
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> SO ORDERED.[13]

Aggrieved, petitioner appealed. He filed a motion praying that the testimony covered by the transcript of stenographic notes dated February 5, 1991 be retaken. The motion was granted by the Court of Appeals in a Resolution[14] dated July 14, 1999. However, on April 10, 2000, the public prosecutor filed a Manifestation[15] stating that Ballecer was no longer interested in pursuing his complaint against petitioner and that the case should be decided in light of Ballecer's Affidavit of Desistance.[16]

On October 26, 2004, the Court of Appeals rendered a Decision affirming the judgment of conviction by the trial court. The appellate court held:

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[11] *Id.* at 166-167.

[12] Records, pp. 448-450. Penned by Judge Salvador S. Abad Santos.

[13] *Id.* at 450.

[14] CA *rollo*, p. 50.

[15] Records, pp. 504-505.

[16] *Id.* at 506-507.

WHEREFORE, PREMISES CONSIDERED, the Decision, dated March 11, 1997, is hereby AFFIRMED and the sentence imposed by the Court ***a quo*** on the accused is clarified, thus: for the accused to suffer the indeterminate penalty of 2 years, 11 months and 11 days of *prision correccional* as minimum to 15 years of *reclusion temporal* as maximum. The judgment of the Court ***a quo*** ordering accused-appellant to pay private complainant the sum of ₱100,000.00 representing the amount misappropriated is likewise AFFIRMED.

SO ORDERED.[17]

Petitioner filed a motion for reconsideration.[18] The same was denied in a Resolution dated April 14, 2005. Dissatisfied with the aforementioned rulings of the Court of Appeals, the petitioner now comes before us, raising the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS HAS DECIDED THE CASE (CA-G.R. CR NO. 21877) IN A WAY PROBABLY NOT IN ACCORDANCE WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT;

II.

WHETHER THE RESPONDENT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND [USUAL] COURSE OF JUDICIAL PROCEEDINGS, OR SO FAR SANCTIONED SUCH DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION;

III.

WHETHER OR NOT THIS HONORABLE TRIBUNAL, IN THE EXERCISE OF ITS POWER OF REVIEW, MAY REVERSE THE DECISION OF THE RESPONDENT COURT, ESPECIALLY IN CASES WHERE THERE IS MORE THAN A CLEAR GROUND OF REASONABLE DOUBT.[19]

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[17] CA *rollo*, p. 175.

[18] *Id.* at 178-182.

[19] *Rollo*, p. 22.

In the main, the issue is: Did the Court of Appeals err in convicting the petitioner for the crime of *estafa* despite the missing transcript of stenographic notes dated February 5, 1991?

In his petition, the petitioner contends that he should have been acquitted of the crime charged. He avers that when the trial court rendered its decision, the transcript of stenographic notes taken on February 5, 1991 was missing. Hence, the appellate court erred in not ordering the trial court to render a new decision based on the complete evidence submitted by the parties, including the testimony on the missing stenographic notes. Petitioner asserts that the facts as found by the trial court and adopted by the appellate court are not complete. Thus, the same should not be used as basis for convicting him of the crime charged.[20]

For its part, the Office of the Solicitor General (OSG) counters that nothing on the record states that the questioned transcript was already missing when the trial court rendered its decision. In fact, the matter of the transcript being lost or missing surfaced only when the case was already in the appellate stage. Also, there is no proof that Ballecer's testimony was not considered at all when the trial court rendered its decision. The OSG submits that contrary to petitioner's claim, the decision of the trial court made reference to the testimony of Ballecer. Conversely, even if the February 5, 1991 transcript was missing when the trial court decided the case, other evidence were presented, which as properly appreciated, led the trial court to correctly conclude that the petitioner committed the crime of *estafa*.[21]

We have carefully examined the records of the case and find no cogent reason to disturb the findings of the appellate court.

First, all the elements of *estafa* under Article 315, par. 1(b) of the Revised Penal Code are present. The elements of *estafa* under said provision are: (a) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving

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[20] *Id.* at 26-29.

[21] *Id.* at 104-107.

the duty to make delivery of, or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender; or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another.[22]

Here, the petitioner received in trust from Ballecer the amount of ₱100,000 for the purpose of opening a letter of credit for the importation of jute sacks with the concurrent obligation to return the same amount in the event that the transaction failed to materialize. Petitioner, however, misappropriated and applied to his own use the said amount and even admitted issuing checks to be drawn from the ₱100,000 for a purpose other than opening a letter of credit. Petitioner was then asked to return the ₱100,000. Despite repeated verbal and formal demands, petitioner failed and refused to return said amount to the prejudice of Ballecer. Clearly, all the elements of the crime of *estafa* were proven in the instant case.[23]

Second, the appellate court did not err in convicting petitioner despite the fact that the February 5, 1991 transcript was missing. As correctly pointed out by the OSG, nothing on record categorically indicates that the transcript was already missing when the trial court rendered its decision. The mere fact that the trial court did not mention the February 5, 1991 testimony does not mean that it was not considered at all. Courts are not required to state in its decision all the facts found in the records. It is enough that the court states the facts and the law on which its decision is based.[24] The mere fact that no mention was made in the trial court's decision of the testimony of a witness does not necessarily mean said testimony was overlooked by the

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[22] *Lee v. People*, G.R. No. 157781, April 11, 2005, 455 SCRA 256, 266-267.

[23] Records, pp. 449-450.

[24] RULES OF COURT, Rule 36,

SECTION 1. *Rendition of judgments and final orders*. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

trial court in arriving at its decision. If it did not make reference of said testimony, it is because it was insignificant.[25]

Even assuming that the transcript of February 5, 1991 was missing at the time the trial court decided the case, there were other evidence presented which led it to correctly conclude that indeed petitioner committed *estafa*. In fact, the missing transcript of February 5, 1991 contained only a portion of the testimony of Ballecer. Other transcripts, which extensively covered Ballecer's testimonies, provided sufficient basis for the trial court to convict petitioner.

Finally, the Affidavit of Desistance[26] submitted by Ballecer will not justify the dismissal of the action. By itself, an Affidavit of Desistance is not a ground for the dismissal of an action, once the action has been instituted in court.[27] Here, Ballecer made the so-called pardon of the petitioner after the institution of the action. He made the Affidavit of Desistance only on October 25, 1999 — more than two years after the trial court had rendered its decision. The Court attaches no persuasive value to a desistance especially when executed as an afterthought. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who had given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.[28] Moreover, if we allow the dismissal of the case in view of Ballecer's Affidavit of Desistance, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.[29]

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[25] *People v. Derpo*, Nos. L-41040 & 43908-10, December 14, 1988, 168 SCRA 447, 455.

[26] *Rollo*, pp. 53-54.

[27] *People v. Ramirez Jr.*, G.R. Nos. 150079-80, 10 June 2004, 431 SCRA 666, 677.

[28] *Alonte v. Savellano, Jr.*, G.R. No. 131652, March 9, 1998, 287 SCRA 245, 264 citing *People v. Junio*, G.R. No. 110990, October 28, 1994, 237 SCRA 826, 834.

[29] *Victoriano v. People of the Philippines*, G.R. Nos. 171322-24, November 30, 2006, 509 SCRA 483, 491-492.

WHEREFORE, the petition is hereby *DENIED*. The Decision dated October 26, 2004 and the Resolution dated April 14, 2005 of the Court of Appeals in CA-G.R. CR No. 21877 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170567. November 14, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CONRADO DIOCADO @ "Jun",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY TRIAL COURT ARE ACCORDED GREAT RESPECT. — [T]he findings of the trial court on the credibility of witnesses and of their testimonies are accorded great respect. It is the trial judge who sees the behavior and demeanor of the witnesses in court, their possession or lack of intelligence, as well as their understanding of the obligation of an oath. The trial court's evaluation or assessment acquires greater significance in rape cases because of the nature of the offense; oftentimes, the only evidence available is the victim's testimony.

2. CRIMINAL LAW; RAPE; AN EXACT ALLEGATION OF THE ACTUAL DATE AND TIME OF THE RAPE IS NOT AN ELEMENT OF THIS CRIME. — [A]n exact allegation of the actual date and time of the rape is not an element of this crime; what must be proven is the carnal knowledge of the accused with the private complainant without her consent. Thus, as a rule, the exact time of the commission of the rape is not

a ground for acquittal once the prosecution has clearly established the sexual act between the rapist and the victim without the latter's consent.

3. ID.; ID.; NO HARD AND FAST RULE CAN BE MADE ON HOW RAPE VICTIMS REACT, ESPECIALLY WHEN THE VICTIM IS YOUNG AND IS RELATED TO THE ACCUSED. — Our judicial experience in handling rape cases teaches us that no hard and fast rule can be made on how rape victims react, especially when the victim is young and is related to the accused. The approach we have consistently adopted in these types of cases is to regard normal behavior to be a relative term; people faced with the same kind of stimulus may react differently. This is all the more true in crimes like rape which does not only entail violence against the person of the victim; it is a crime that cannot but emotionally affect the victim and give rise to untold feelings, especially in a culture like ours where a stigma attaches to rape victims.

4. REMEDIAL LAW; EVIDENCE; DENIAL; MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY. — The established *dictum* is that denial is an intrinsically weak defense that must be supported by strong evidence of non-culpability to merit credibility.

5. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE. — [F]or the defense of *alibi* to prosper, not only must the accused-appellant prove that he was in another place at the time of the commission of the crime; he must also show that it was impossible for him to be at the crime scene at the appointed time.

6. CRIMINAL LAW; RAPE; PENALTY; CASE AT BAR. — Under Republic Act No. 7659, the penalty of death shall be imposed if the crime is committed 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 common-law spouse of the parent of the victim. Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides that the minority of the complainant and her filiation with the accused or the fact that the accused was the common-law spouse of her parent must be alleged in the Information. Although the Revised Rules of Criminal Procedure

came after the commission of the rape in this case, its provisions may be applied retroactively considering that it is favorable to the accused. Accordingly, while the Information stated that AAA was 11 years old at the time of the commission of the rape, it failed to indicate (although it was later on established during the trial) that Diocado is the common-law spouse of AAA's mother. Thus, both the RTC and CA are correct that Diocado is only guilty of simple rape punishable by *reclusion perpetua*.

7. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — The RTC and CA correctly awarded the private complainant the amount of ₱50,000 as civil indemnity and another ₱50,000 as moral damages, in accordance with the prevailing jurisprudence. Civil indemnity is in the nature of actual and compensatory damages that must be awarded upon a finding of guilt in rape cases. Moral damages, on the other hand, are automatically awarded to rape victims without the necessity of proof; the law assumes that the victim suffered moral injuries entitling her to this award. We increase the award of exemplary damages to ₱25,000.00 in accordance with existing jurisprudence. The award of exemplary damages is warranted after the prosecution established that Diocado is the common-law spouse of CCC and has lived under the same roof with AAA since the latter was only 7 to 9 years old; AAA also regarded him as the stepfather who sent her to school. Likewise undisputed is the circumstance that the rape took place in the bathroom of AAA's own house where she should have felt safe and protected. These circumstances show that the aggravating circumstances of abuse of confidence and commission of the crime in the dwelling of the offended party were present pursuant to the terms of Article 14, paragraphs 3 and 4 of the Revised Penal Code, as amended. While these circumstances cannot be used to increase the penalty because they were not alleged in the Information, they nevertheless suffice as bases to award exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We review[1] in this Decision the decision dated October 25, 2005 of the Court of Appeals (*CA)* in CA-G.R. CR-H.C. No. 00280[2] that affirmed the decision dated August 18, 2004 of the Regional Trial Court (*RTC)*, Branch 44, Masbate City in Criminal Case No. 8775.[3] The RTC decision found accused-appellant Conrado Diocado (*Diocado*) *alias* "Jun" guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, and sentenced him to suffer the penalty of *Reclusion Perpetua*; to pay the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 for moral damages, ₱10,000.00 as exemplary damages; and to pay the costs.[4]

BACKGROUND

On April 30, 1998, Diocado was indicted for the crime of rape under the following *Information*[5]:

> That on or about February 7, 1998, in the afternoon thereof at Sitio Matungao, Brgy. Tugbo, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd design did then and there willfully, unlawfully, and feloniously had carnal knowledge with AAA, an 11 year old girl, against her will.
>
> Contrary to law.

Diocado, assisted by counsel *de oficio*, pleaded not guilty to the charge. In the trial on the merits that ensued, the prosecution presented the testimonies of: (1) Dr. Artemio Capellan (*Dr.*

[1] Petition for Review on *Certiorari* filed under Rule 45 of the 1997 Revised Rules of Court.

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justice Lucas P. Bersamin and Associate Justice Celia C. Librea-Leagogo, concurring; *rollo*, pp. 109-127.

[3] Penned by Hon. Pazlinda A. Villamor-Joaquin; *records*, pp. 101-119.

[4] *Id.,* pp. 118-119.

[5] *Id.,* p. 1.

Capellan), the Municipal Health Officer of Masbate; (2) private complainant AAA;[6] and (3) BBB, the private complainant's older sister. The defense presented: (1) Diocado himself; (2) CCC (his wife and the mother of AAA); (3) Maria Manlapaz; and (4) Joey Cantojos.

The RTC summarized the prosecution's version of events based on the testimony of AAA, as follows:

> … it appears that at about 5:00 o'clock in the afternoon of February 7, 1998, [AAA] was in their house in Matungao, Tugbo, Masbate together with Conrado, the live-in partner of her mother [CCC], who was then frying fish, felt urinating, so she went to the bathroom to take a pee. When she was about to go out from the bathroom, she was barred from doing so by Conrado who, armed with a knife, had followed her inside. Threatening her with the knife, Conrado proceeded to undress her by removing her shorts and panty after which she was told to bend forward. While on that bending position, Conrado touched and fingered her vagina, then inserted his penis therein. AAA felt pain in her vagina and could just only cry. She could not move away from Conrado because she was being held by the same at her waist. Neither could she shout because Conrado would sometimes cover her mouth with his hand or threaten her with the knife. She, however, noticed that, after a while a white fluid came out from the penis of Conrado. When Conrado was done with her, he went out of the bathroom and proceeded upstairs. She, in turn, put on her clothes, went back to the kitchen and still crying, continued frying fish . . .

AAA further testified on cross-examination that she could not shout for help during the sexual assault because she was afraid of Diocado who was holding a knife.[7]

The physical and medical examination conducted by Dr. Capellan yielded the following findings:[8]

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[6] The real name of the victim as well as those of her immediate family members are withheld per Republic Act (R.A.) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

[7] TSN, October 14, 1999, p. 38.

[8] *Records*, p. 54.

EXTERNAL FINDINGS:

1. Abrasion linear in shape posterior location right/left thigh.
2. Lacerated wound right hypochondrium area.

INTERNAL FINDINGS:

1. Old healed laceration 9:00 & 12:00 o'clock in position in the face of the clock.

x x x x x x x x x

CONCLUSION:

Physical virginity lost.

According to Dr. Capellan, the old healed lacerations were due to the rupture of AAA's hymen caused by the penetration of a penis.[9] Dr. Capellan further testified that the lacerations in the private complainant's hymen were already healed because AAA had an elastic type of hymen (*i.e.*, the type that easily heals).[10] Although the injury to the private complainant's hymen might have been caused by carabao, horseback, or bicycle riding, Dr. Capellan considered the external findings conducted on AAA; they showed that the abrasion and lacerated wounds were caused by a sharp object like fingernails or a stone that gave the impression of sexual abuse.[11]

BBB testified that she confronted CCC with what had happened to AAA, but CCC insisted that it was not true.[12] She was later informed that AAA had been placed under the custody of the Department of Social Welfare and Development.[13]

Aside from testimonial evidence, the prosecution submitted documentary evidence consisting of the Medical Certificate executed by Dr. Capellan (Exhibit "A" with submarkings); the

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[9] TSN, September 14, 1999, p. 6.

[10] *Id.*, p. 7

[11] *Id.*, pp. 5 and 7-9.

[12] TSN, March 9, 2000, pp. 5-6.

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

affidavit of AAA (Exhibit "B" with submarkings); and the complaint signed by AAA (Exhibit "C" with submarkings).

Diocado relied on the defenses of *denial* and *alibi* adduced through testimonial evidence, and presented a different version of events. The RTC summarized Diocado's story, as follows:

> . . . He declared that in the afternoon of February 7, 1998, he was at the Circle E Lodging House and Restaurant where he works as a carpenter with a 7:00 o'clock in the morning until 5:00 o'clock in the afternoon work schedule. On that particular day, being a Saturday and a payday, he was not able to go home at 5:00 o'clock because he waited for the manager for his salary. At around 6:00 p.m. the manager arrived and after receiving his salary, he went home. When he arrived home at past 6 in the evening, his wife CCC, who was then tending a sari-sari store, was there, together with their children DDD, EEE and FFF. x x x They took their supper at around 7:00 o'clock in the evening and after resting for a while, Conrado, together with his wife and the three children, went next door to the house of his parents to watch TV. At 9 o'clock they went home.
>
> Conrado further testified that on the night in question, his step-daughter AAA (the private offended party) was not at their house as she was then at the house of Shirlyn Ramirez[14] to do some laundry work, and it was only on February 9, 1998 that she returned home because she was fetched by her older brother. x x x

CCC corroborated Diocado's testimony and narrated that she was at their house at around 5:00 p.m. of February 7, 1998, taking care of her children with Diocado.[15] AAA was also there but she (AAA) later went out without permission; she only came back at around 8:00 p.m.[16] CCC narrated that she heard no complaint from AAA that night or the day after;[17] AAA also never gave her any reason for leaving home that night.[18]

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[14] Also referred to as "Shirleyn"; "Shirley"; or Sherlyn Alcovindas.

[15] TSN, April 6, 2001, pp. 4-6.

[16] *Id.*, pp. 5-6.

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

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

On cross-examination, CCC admitted that the reason AAA left home was because she (CCC) did not believe AAA's story that Diocado sexually abused her.[19] Subsequently recalled to the witness stand (six months later), she varied her testimony, this time declaring that at 5:00 p.m. of February 7, 1998, they had a lady visitor (whose name she did not know) in their house waiting for Diocado who was still at work;[20] and it was only her three children who watched the television that night while she and Diocado rested.[21] She again insisted that AAA's accusation against Diocado was not true and claimed that their bathroom was not enclosed by a curtain but had a door without a lock.[22] She maintained that she did not know of any motive why AAA would falsely accuse Diocado.[23]

The other defense witness, Maria Manlapaz, testified that at 5:00 p.m. of February 7, 1998, she went to the house of CCC (who was alone) to collect money from her but was told to wait for Diocado.[24] At 6:30 p.m., Diocado arrived and gave her ₱100.00 as payment.[25] On cross-examination, she admitted that she came to know CCC in 1998 at the Bureau of Jail and Management Penology (BJMP) when her husband and Diocado were both in jail.[26]

Joey Cantojos, a roomboy who also acted as a paymaster at Circle E Lodge and Restaurant, confirmed that Diocado was there at around 5:00 p.m. of February 7, 1998; and that Diocado went home at around 6:30 p.m. after receiving his salary.[27]

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[19] *Id.*, p. 17.

[20] TSN, October 11, 2001, p. 4.

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

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

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

[24] TSN, May 31, 2002, pp. 3-4.

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

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

[27] TSN, December 5, 2002, pp. 3-4.

The RTC's decision of August 18, 2004 gave greater weight to the prosecution's evidence and rejected Diocado's defenses of *denial* and *alibi*. It believed the testimony of AAA which it described as "straightforward, and unshaken" despite her tender years and the rigorous cross-examination she underwent. In arriving at its conclusion, the RTC also considered that AAA's testimony was compatible with the physical evidence confirming the fact and the manner of her sexual abuse.

In contrast, the court discredited the accused-appellant's defenses of *denial* and *alibi* and took note of the contradictions in the testimonies of defense witnesses CCC and Maria Manlapaz. The trial court also found that the testimony of Joey Cantojos did not disprove Diocado's guilt as it was not physically impossible for him to be at the scene of the crime. Similarly, the RTC debunked — for lack of supporting evidence — Diocado's claim that AAA had improper motive to falsely accuse and testify against him.

Diocado appealed his conviction to the CA, but the appellate court affirmed the RTC's decision. He now supports the present appeal with the argument that the RTC and CA committed reversible error when they anchored his conviction on AAA's incredible testimony.

THE ASSIGNMENT OF ERRORS

I.

THE LOWER COURT GRAVELY ERRED IN CONVICTING DIOCADO BASED SOLELY ON THE INCREDIBLE TESTIMONY OF PRIVATE COMPLAINANT.

II.

THE LOWER COURT GRAVELY ERRED IN FINDING DIOCADO GUILTY BEYOND REASONBALE DOUBT [OF] THE CRIME OF RAPE.

OUR RULING

We **DENY** the appeal and affirm Diocado's conviction.

First, we have held in a long line of cases that the findings of the trial court on the credibility of witnesses and of their testimonies are accorded great respect.[28] It is the trial judge who sees the behavior and demeanor of the witnesses in court, their possession or lack of intelligence, as well as their understanding of the obligation of an oath.[29] The trial court's evaluation or assessment acquires greater significance in rape cases because of the nature of the offense; oftentimes, the only evidence available is the victim's testimony.[30]

Our own independent examination of the records discloses no compelling reason to disturb the findings of the RTC, particularly its view that the testimony of AAA was straightforward and unshaken despite her tender years as she narrated the sexual abuse she suffered in the hands of Diocado. We thus gave great weight to her testimony on direct examination on October 14, 1999 when she testified:[31]

Q Please do so?
A After urinating, my stepfather entered the bathroom armed with a knife threatening me not to go out.

Q What else did the accused do?
A After threatening me with his knife, he undressed me.

x x x x x x x x x

Q What part of your clothing was undressed by the accused?
A My short and panty.

x x x x x x x x x

Q After that, what happened next?
A I was made to bend down (which means in the local dialect "towad").

Q Can you make it clear, Witness, can you demonstrate in what way you were required to bend your body or towad?

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[28] *People v. Buenaflor*, G.R. No. 148134, July 8, 2003, 405 SCRA 396, 402.

[29] *Id*.

[30] *Id*.

[31] TSN, October 14, 1999, pp. 9-10.

A I was made to bend down (witness demonstrating by bending her body with her head down with her buttocks up).

Q While in that position, what did the accused do if there was any?
A First, he fingered me.

Q What do you mean by you were fingered?
A He fingered my vulva.

Q After your vulva was fingered by the accused, what happened next?
A He inserted his penis into my vagina.

Q Did the penis of the accused able to penetrate your vagina?
A Yes, sir.

She remained steadfast in this narration and her identification of Diocado as the perpetrator despite the rigorous cross-examination she underwent.[32] Her credibility was strengthened when she cried at certain points of her testimony as she related the details of the rape.[33] It was further reinforced by its marked compatibility with the physical evidence reflected in Dr. Capellan's findings. These findings were consistent with her testimony that she was made to bend down while Diocado held her by the waist as she was raped.

Second, Diocado's attempt to discredit AAA by pointing out the discrepancies in her sworn affidavit and her court testimony on the actual date when the rape took place is more imagined than real. We found no real variance as both the sworn affidavit and testimony of AAA spoke of February 7, 1998 as the date of the rape. In any case, even assuming that discrepancies exist, these are not material if they relate to minor matters and do not negate the fact of rape, or if they do not relate to the material aspects of the crime. Discrepancies can also be disregarded when they are explained by other trustworthy evidence.

In these regards, we note that an exact allegation of the actual date and time of the rape is not an element of this crime; what

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[32] *Id.*, pp. 26-39.

[33] *Id.*, p. 10.

must be proven is the carnal knowledge of the accused with the private complainant without her consent.[34] Thus, as a rule, the exact time of the commission of the rape is not a ground for acquittal once the prosecution has clearly established the sexual act between the rapist and the victim without the latter's consent.[35] All throughout the trial, AAA remained consistent and never wavered in her testimony relating to the events that transpired before, during, and after the commission of the rape, and her positive identification of Diocado as the perpetrator.

In terms of corroboration, we find it significant that immediately after the rape, AAA reported the matter to CCC who herself confirmed what AAA did.[36] It is also important that AAA's actions after the rape were consistent with the actions of a young female who had been grossly wronged. AAA herself testified that she left home without permission three days after the incident and the reason she left was CCC's refusal to believe that Diocado raped her.[37] We additionally note that aside from running away, (a) AAA refused to go back home despite the whipping she suffered from her older brother; (b) aside from her mother, she also reported the rape to her grandmother and to a friend; and (c) she voluntarily submitted herself to medical examination and went through the process of filing a rape case and testifying against Diocado. To our mind, these are manifestations that cannot simply be negated by claims that discrepancies exist regarding the date the rape took place.

Third, as the trial court did, we cannot give any credit to Diocado's argument that AAA did not even shout for help when she was allegedly raped. We believe that AAA satisfactorily explained why this happened: she was afraid of Diocado who was holding a knife and who also covered her mouth with his hands:

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[34] *People v. Escaño*, G.R. Nos. 140218-23, February 13, 2002, 376 SCRA 670, 686.

[35] *Id.,* p. 687.

[36] TSN, April 6, 2001, p. 17.

[37] TSN, October 14, 1999, pp. 14-15.

Q You did not shout?
A I could not shout because he was covering my mouth with his hands.

COURT

Q While the accused was inserting his penis into your vagina, your mouth was not covered by the hands of the accused?
A No, sir.

ALFORTE

Q Why did you not shout?
A Because he was threatening me with his knife.[38]

x x x x x x x x x

x x x x x x x x x

BADILLOS

Q The houses in the neighborhood are very close to each other, in fact, the house of the mother of your stepfather is just adjacent to your house, is it not?
A Yes, sir.

Q And, have you shouted or … had you shouted (sic) people in the neighborhood could have heard you?
A Yes, sir.

Q But you did not shout?
A Because I was afraid to (sic) him.

COURT

Q Why did you not shout?
A I was afraid of my stepfather.[39]

This explanation, to our mind, is completely plausible. AAA was *physically* restrained during the rape. She was also *emotionally* prevented from calling for help because her stepfather was holding a knife. If a person of age and ordinary prudence can be subdued into submission and silence by these kinds of restraints, can a young innocent girl act any differently?

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[38] *Id.*, October 14, 1999, p. 10.

[39] *Id.*, p. 38.

Even if AAA had not been so restrained, we emphasize that her failure to shout for help cannot *per se* be read as an indicator that no rape took place. Our judicial experience in handling rape cases teaches us that no hard and fast rule can be made on how rape victims react, especially when the victim is young and is related to the accused. The approach we have consistently adopted in these types of cases is to regard normal behavior to be a relative term; people faced with the same kind of stimulus may react differently. This is all the more true in crimes like rape which does not only entail violence against the person of the victim; it is a crime that cannot but emotionally affect the victim and give rise to untold feelings, especially in a culture like ours where a stigma attaches to rape victims.

For all these reasons, we cannot give any credit to Diocado's defense in so far as it seeks to impugn AAA's testimony for her failure to shout during the act of rape.

Fourth, we cannot avoid considering that this is a case where AAA is pitted against the testimonies of her stepfather and her own mother. What is involved, however, is not a straight line weighing of statements against statements, with two statements being always better than one. In a court of law, we look at the totality of the evidence adduced and we weigh these using the scales of reason, experience and credibility based on insights into the human character, all made within the parameters of the law. All these now tell us that, under the circumstances of this case, the mother's word cannot prevail against the word of her wronged daughter. The testimonial evidence of rape, supported by convincing physical evidence, cannot be defeated by a mother's contrary testimony. That CCC was in fact at home in the afternoon of February 7, 1998 does not negate the commission of the rape. Time and again, we have declared that lust is no respecter of time and place. It is a master that does not recognize decency or morality but cares only for the fulfillment of its selfish desires. CCC's changing testimonies also tell us that at some point she might have chosen the practical option of siding with the husband who provides for her and her family. Thus, we cannot give credit to what CCC, as mother, said with respect to her daughter's charge of sexual abuse in the hands of her stepfather.

Lastly, the defenses of *denial* and *alibi* of Diocado cannot prevail as against the positive, straightforward and consistent testimony of AAA that both the RTC and the CA found credible. The established *dictum* is that denial is an intrinsically weak defense that must be supported by strong evidence of non-culpability to merit credibility.[40] In the same manner, for the defense of *alibi* to prosper, not only must the accused-appellant prove that he was in another place at the time of the commission of the crime; he must also show that it was impossible for him to be at the crime scene at the appointed time.[41] In the present case, the evidence on record shows that it was not physically impossible for Diocado to have committed the rape as the distance of his house to his place of work is only one kilometer. This distance can be negotiated in 10 minutes when riding a bicycle and in less than 5 minutes when riding a tricycle.[42] Rather than disturb the appreciation by the RTC and the CA of the testimonies of the defense witnesses, we quote with approval the following CA findings:

> In contrast, appellant's defense of *alibi* is far from convincing. His testimony and those of his witnesses collided with each other. Tessie Diocado declared that, at the time of the incident, she was at their house with her children including the private complainant; that private complainant went out but returned around 8:00 p.m.; and that the private complainant left the house on February 9, 1998. But Maria Manlapaz, their supposed visitor, affirmed that Tessie was all alone in the house, when she visited their house. On the other hand, the appellant testified that, when he arrived at the house, the private complainant was not there and she came home only on February 9, 1998; and he never mentioned having met Manlapaz that evening. Notably, Tessie Diocado stated that they had a lady visitor on the date and time of the incident but she does not know the name of said visitor. However, Maria Manlapaz, who was the visitor that Tessie was referring to, said that Tessie bought some goods from her that was why she went to Tessie's house to collect payment.

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[40] *People v. Soriano*, G.R. No. 135027, July 3, 2002, 383 SCRA 676.

[41] *Id.*

[42] TSN, March 11, 2004, p. 11.

Furthermore, appellant's co-employee, Joey Cantojos, testified that, on the day of the incident, he was the one who gave the salary of the appellant. Yet, appellant claimed that it was the manager who released their wages. Such discordant and irreconcilable testimonies indicated a tendency to prevaricate and to twist the facts.

These weaknesses have not been remedied by testimonial records showing (a) CCC's silence when asked by the RTC who she would believe between her daughter and her husband;[43] (b) Maria Manlapaz' testimony that she only met CCC in 1998 at the BJMP when Diocado was already committed to jail and where her (Manlapaz') husband was also a detention prisoner;[44] and (c) Joey Cantojos' admission that he was requested by Diocado to help him in the case, and his uncorroborated explanation for his delay in clearing Diocado's name.[45] These weaknesses, when considered against AAA's positive and steadfast testimony, give us comfort that our conclusion to convict Diocado cannot be wrong.

The Proper Penalty

Article 335 of the Revised Penal Code, as amended,[46] defines and penalizes the crime of rape as follows:

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 and 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.

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[43] TSN, October 11, 2001, p. 26.

[44] TSN, May 31, 2002, p. 8.

[45] TSN, December 5, 2002, pp. 10-11.

[46] As amended by R.A. No. 7659, "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

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

Under Republic Act No. 7659, the penalty of death shall be imposed if the crime is committed 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 common-law spouse of the parent of the victim. Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides that the minority of the complainant and her filiation with the accused or the fact that the accused was the common-law spouse of her parent must be alleged in the Information. Although the Revised Rules of Criminal Procedure came after the commission of the rape in this case, its provisions may be applied retroactively considering that it is favorable to the accused. Accordingly, while the Information stated that AAA was 11 years old at the time of the commission of the rape, it failed to indicate (although it was later on established during the trial) that Diocado is the common-law spouse of AAA's mother. Thus, both the RTC and CA are correct that Diocado is only guilty of simple rape punishable by *reclusion perpetua*.

The RTC and CA correctly awarded the private complainant the amount of ₱50,000 as civil indemnity and another ₱50,000 as moral damages, in accordance with the prevailing jurisprudence.[47] Civil indemnity is in the nature of actual and compensatory damages that must be awarded upon a finding of guilt in rape cases.[48] Moral damages, on the other hand, are automatically awarded to rape victims without the necessity of proof; the law assumes that the victim suffered moral injuries entitling her to this award.[49]

We increase the award of exemplary damages to ₱25,000.00 in accordance with existing jurisprudence.[50] The award of

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[47] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 352 (2005).

[48] *Id*.

[49] *Id*.

[50] *People v. Blancaflor*, *supra* note 28, p. 366.

exemplary damages is warranted after the prosecution established that Diocado is the common-law spouse of CCC and has lived under the same roof with AAA since the latter was only 7 to 9 years old;[51] AAA also regarded him as the stepfather who sent her to school.[52] Likewise undisputed is the circumstance that the rape took place in the bathroom of AAA's own house where she should have felt safe and protected.

These circumstances show that the aggravating circumstances of abuse of confidence and commission of the crime in the dwelling of the offended party were present pursuant to the terms of Article 14, paragraphs 3 and 4 of the Revised Penal Code, as amended.[53] While these circumstances cannot be used to increase the penalty because they were not alleged in the Information, they nevertheless suffice as bases to award exemplary damages.[54]

WHEREFORE, premises considered, we hereby *DENY* the accused-appellant's Petition for Review. The appealed Decision dated October 25, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00280 finding accused-appellant Conrado Diocado @ Jun guilty beyond reasonable doubt of the crime of simple rape is hereby *AFFIRMED* but the award of exemplary damages is *MODIFIED* and increased to ₱25,000.00.

The other portions of the appealed Decision are hereby *AFFIRMED*.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.*, concur.

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[51] TSN, March 11, 2004, p. 7.

[52] *Id.,* and TSN, October 14, 1999, p. 5.

[53] *People v. Blancaflor, supra* note 50, p. 366.

[54] *Ibid.*

FIRST DIVISION

[G.R. Nos. 171383 & 172379. November 14, 2008]

SILKAIR (SINGAPORE) PTE. LTD., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; THE NATIONAL INTERNAL REVENUE CODE; EXCISE TAXES ON CERTAIN GOODS; EXCISE TAXES; DEFINED. — Section 129 of the NIRC provides that excise taxes refer to taxes imposed on specified goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production. Although excise taxes can be considered as taxes on production, they are really taxes on property as they are imposed on certain specified goods. x x x [E]xcise tax, whether classified as specific or *ad valorem* tax, is basically an indirect tax imposed on the consumption of a specified list of goods or products. The tax is directly levied on the manufacturer upon removal of the taxable goods from the place of production but in reality, the tax is passed on to the end consumer as part of the selling price of the goods sold.

2. ID.; ID.; KINDS OF TAXES; DIRECT AND INDIRECT TAXES, DISTINGUISHED. — In *Commissioner of Internal Revenue v. Philippine Long Distance Company*, the Court explained the difference between a direct tax and an indirect tax: "Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax. In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in. On the other hand, ***indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else***. Stated elsewise, ***indirect taxes***

are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered."

3. ID.; REMEDIES; TAX REFUND; THE PERSON ENTITLED TO CLAIM A TAX REFUND IS THE STATUTORY TAXPAYER; TAXPAYER, DEFINED. — The person entitled to claim a tax refund is the statutory taxpayer. Section 22 (N) of the NIRC defines a taxpayer as "any person subject to tax." In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.,* the Court ruled that: A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.

APPEARANCES OF COUNSEL

Pastrana Fallar for petitioner.
Hanna Angela C. Taguinin for respondent.

D E C I S I O N

CARPIO,[*] *J.*:

The Case

G.R. No. 171383

Silkair (Singapore) Pte. Ltd. (petitioner) filed this Petition for Review[1] to reverse the Court of Tax Appeals' Decision[2]

[*] Per Special Order No. 534.

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

[2] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez, concurring, and Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, dissenting.

dated 20 October 2005 in C.T.A. Case No. 6217 as well as the Resolution dated 3 February 2006 denying the Motion for Reconsideration. In the assailed decision, the Court of Tax Appeals *En Banc* denied petitioner's claim for refund or issuance of a tax credit certificate of ₱4,239,374.81, representing excise taxes paid on petitioner's purchase of aviation jet fuel from Petron Corporation (Petron) for the period from 1 January 1999 to 30 June 1999.

G.R. No. 172379

Petitioner filed this Petition for Review[3] to reverse the Court of Tax Appeals' Decision[4] dated 5 January 2006 in C.T.A. Case No. 6308 as well as the Resolution dated 18 April 2006 denying the Motion for Reconsideration. In the assailed decision, the Court of Tax Appeals *En Banc* denied petitioner's claim for refund or issuance of a tax credit certificate of ₱4,831,224.70, representing excise taxes paid on petitioner's purchase of aviation jet fuel from Petron for the period from 1 July 1999 to 31 December 1999.

On 2 August 2006, this Court issued a resolution to consolidate both cases since they involve the same parties and the same issue, whether petitioner is entitled to a refund of the excise taxes paid on its purchases of aviation jet fuel from Petron.

The Facts

Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine representative office in Cebu City. It is engaged in business as an on-line international carrier, operating the Singapore-Cebu-Singapore, Singapore-Davao-Cebu-Singapore, and Singapore-Cebu-Davao-Singapore routes.[5]

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

[4] Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista and Olga Palanca-Enriquez, concurring, and Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, dissenting.

[5] *Rollo* (G.R. No. 171383), p. 9; *rollo* (G.R. No. 172379), p. 12.

From 1 January 1999 to 31 December 1999, petitioner purchased aviation jet fuel from Petron for use on petitioner's international flights.[6] Based on the Aviation Delivery Receipts and Invoices presented, ₱3.67 per liter as excise (specific) tax was added to the amount paid by petitioner on its purchases of aviation jet fuel.[7] Petitioner, through its sister company Singapore Airlines Ltd., paid ₱4,239,374.81 from 1 January 1999 to 30 June 1999[8] and ₱4,831,224.70 from 1 July 1999 to 31 December 1999,[9] as excise taxes for its purchases of the aviation jet fuel from Petron. Petitioner, contending that it is exempt from the payment of excise taxes, filed a formal claim for refund with the Commissioner of Internal Revenue (respondent).

Petitioner claims that it is exempt from the payment of excise tax under the 1997 National Internal Revenue Code (NIRC), specifically Section 135, and under Article 4 of the Air Transport Agreement between the Governments of the Republic of the Philippines and the Republic of Singapore (Air Agreement).[10]

Section 135 of the NIRC provides:

SEC. 135. **Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.** — Petroleum products sold to the following are exempt from excise tax:

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided*, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

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[6] *Id.*

[7] Exhibits K-4 to K-22, K-26 to K-34, K-36 to K-45, K-48, K-50 to K-56, K-61 to K-76, K-80 to K-91, K-95 to K-99, K-101 to K-126, K-130 to K-138, K-142 to K-154, K-158 to K-166, K-168 to K-173, K-175 to K-180, K-184 to K-193, K-197 to K-209, K-214 to K-228, K-232, K-234, K-236, K-238, K-243 to K-265.

[8] Exhibit L-1.

[9] *Rollo* (G.R. No. 172379), p. 12.

[10] *Rollo* (G.R. No. 171383), p. 9; *rollo* (G.R. No. 172379), p. 12.

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

(c) Entities which are by law exempt from direct and indirect taxes.[11]

Article 4 of the Air Agreement provides:

Art. 4

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2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the services performed, be exempt from the same custom duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.[12]

Petitioner contends that in reality, it paid the excise taxes due on the transactions and Petron merely remitted the payment to the Bureau of Internal Revenue (BIR). Petitioner argues that to adhere to the view that Petron is the legal claimant of the refund will make petitioner's right to recover the erroneously paid taxes dependent solely on Petron's action over which petitioner has no control. If Petron fails to act or acts belatedly, petitioner's claim will be barred, depriving petitioner of its private property.[13]

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[11] *Rollo* (G.R. No. 171383), p. 13; *rollo* (G.R. No. 172379), p. 16.

[12] *Id*.

[13] *Rollo* (G.R. No. 171383), p. 12; *rollo* (G.R. No. 172379), p. 15.

Petitioner also maintains that to hold that only Petron can legally claim the refund will negate the tax exemption expressly granted to petitioner under the NIRC and the Air Agreement.[14] Petitioner argues that a tax exemption is a personal privilege of the grantee, which is petitioner in this case. Petitioner further argues that a tax exemption granted to the buyer cannot be availed of by the seller; hence, in the present case, Petron as seller cannot legally claim the refund. On the other hand, if only the entity that paid the tax — Petron in this case — can claim the refund, then petitioner as the grantee of the tax exemption cannot enjoy its tax exemption. In short, neither petitioner nor Petron can claim the refund, rendering the tax exemption useless. Petitioner submits that this is contrary to the language and intent of the NIRC and the Air Agreement.[15]

Petitioner also cites this Court's Resolution in *Maceda v. Macaraig, Jr.*,[16] quoting the opinion of the Secretary of Justice which states, thus:

> The view which refuses to accord the exemption because the tax is first paid by the seller disregards realities and gives more importance to form than substance. Equity and law always exalt substance over form.[17]

Petitioner believes that its tax exemption under Section 135 of the NIRC also includes its entitlement to a refund from the BIR in any case of erroneous payment of excise tax.[18]

Respondent claims that as explained in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,[19] the nature of an indirect tax allows the tax to be passed on to the purchaser as part of the commodity's purchase price. However, an indirect

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[14] *Id*.

[15] *Rollo* (G.R. No. 171383), p. 16; *rollo* (G.R. No. 172379), p. 20.

[16] G.R. No. 88291, 8 June 1993, 223 SCRA 217, 255.

[17] *Rollo* (G.R. No. 171383), p. 14; *rollo* (G.R. No. 172379), p. 17.

[18] *Rollo* (G.R. No. 171383), p. 17; *rollo* (G.R. No. 172379), p. 20.

[19] No. L-19707, 17 August 1967, 20 SCRA 1056.

tax remains a tax on the seller. Hence, if the buyer happens to be tax exempt, the seller is nonetheless liable for the payment of the tax as the same is a tax not on the buyer but on the seller.[20]

Respondent insists that in indirect taxation, the manufacturer or seller has the option to shift the burden of the tax to the purchaser. If and when shifted, the amount added by the manufacturer or seller becomes part of the purchase price of the goods. Thus, the purchaser does not really pay the tax but only the price of the commodity and the liability for the payment of the indirect tax remains with the manufacturer or seller.[21] Since the liability for the excise tax payment is imposed by law on Petron as the manufacturer of the petroleum products, any claim for refund should only be made by Petron as the statutory taxpayer.[22]

The Ruling of the Court of Tax Appeals

G.R. No. 171383

On 20 October 2005, the Court of Tax Appeals *En Banc* (CTA) ruled that the excise tax imposed on the removal of petroleum products by the oil companies is an indirect tax.[23] Although the burden to pay an indirect tax can be passed on to the purchaser of the goods, the liability to pay the indirect tax remains with the manufacturer or seller.[24] When the manufacturer or seller decides to shift the burden of the indirect tax to the purchaser, the tax becomes a part of the price; therefore, the purchaser does not really pay the tax *per se* but only the price of the commodity.[25]

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[20] *Rollo* (G.R. No. 171383), pp. 126-127.

[21] *Id.* at 129.

[22] *Id.* at 131.

[23] *Id.* at 67.

[24] *Id.* at 68.

[25] *Id.* at 69.

The CTA pointed out that Section 130(A)(2)[26] of the NIRC provides that the liability for the payment of excise taxes is imposed upon the manufacturer or producer of the petroleum products. Under the law, the manufacturer or producer is the taxpayer. The CTA stated that it is only the taxpayer that may ask for a refund in case of erroneous payment of taxes. Citing *Cebu Portland Cement Co. v. Collector of Internal Revenue*,[27] the CTA ruled that the producer of the goods is the one entitled to claim for a refund of indirect taxes.[28] The CTA held that since the liability for the excise taxes was placed on Petron as the manufacturer of the petroleum products and it was shown in the Excise Tax Returns[29] that the excise taxes were paid by Petron, any claim for refund of the excise taxes should only be made by Petron as the taxpayer. This is in consonance with the rule on *strictissimi juris* with respect to tax exemptions. Petitioner cannot be considered the taxpayer because what was transferred to petitioner was only the burden and not the liability to pay the excise tax on petroleum products.[30]

The CTA also considered the Aviation Fuel Supply Agreement between petitioner and Petron, which states:

> Buyer shall pay any taxes, fees or other charges imposed by any national, local or airport authority on the delivery, sale, inspection, storage and use of fuel, except for taxes on Seller's income and taxes on raw material. To the extent allowed, Seller shall show these

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[26] Section 130. Filing of Return and Payment of Excise Tax on Domestic Products.

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(2) Time for Filing of Return and Payment of the Tax. — Unless otherwise specifically allowed, the return shall be filed and the **excise tax paid by the manufacturer or producer** before removal of domestic products from place of production: x x x (emphasis supplied in the CTA *En Banc* Decision)

[27] No. L-20563, 29 October 1968, 25 SCRA 789.

[28] *Rollo* (G.R. No. 171383), pp. 71-72.

[29] CTA *rollo*, pp. 107-120.

[30] *Rollo* (G.R. No. 171383), pp. 73-74.

taxes, fees and other charges as separate items on the invoice for the account of the Buyer.[31]

However, the CTA held that even with this provision, the liability for the excise tax remained with Petron as manufacturer or producer of the aviation jet fuel. The shifting of the burden of the excise tax to petitioner did not transform petitioner into a taxpayer. Hence, Petron is the proper party that can claim for refund of any erroneous excise tax payments.[32]

G.R. No. 172379

The CTA *En Banc* held that excise taxes on domestic products are paid by the manufacturer or producer before removal of the products from the place of production. The payment of an excise tax, being an indirect tax, can be shifted to the purchaser of goods but the statutory liability for such payment is still with the seller or manufacturer.[33] The CTA cited *Maceda v. Macaraig, Jr.*:[34]

> It may be useful to make a distinction, for the purpose of this disposition, between a direct tax and an indirect tax. A direct tax is a tax for which a taxpayer is directly liable on the transaction or business it is engaged in. Examples are custom duties and *ad valorem* taxes paid by the oil companies to the Bureau of Customs for their importation of crude oil, and the specific and *ad valorem* taxes they pay to the Bureau of Internal Revenue after converting the crude oil into petroleum products.
>
> On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise tax and *ad valorem* taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price."[35]

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[31] *Id.* at 74.

[32] *Id*.

[33] *Rollo* (G.R. No. 172379), p. 81.

[34] G.R. No. 88291, 31 May 1991, 197 SCRA 771.

[35] *Id.* at 791.

The CTA further cited *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[36] and *Contex Corporation v. Hon. Commissioner of Internal Revenue*[37] and concluded that the tax sought to be refunded is an excise tax on petroleum products, partaking of the nature of an indirect tax.[38]

The CTA further ruled that while it is cognizant of the exempt status of petitioner under the NIRC and the Air Agreement, it is also aware that the right to claim for refund of taxes erroneously paid lies with the person statutorily liable to pay the tax in

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[36] "It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does, the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. The effect is still the same, namely, that the purchaser doe not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else." (*Supra* note 19 at 1063-1064).

[37] "At this juncture, it must be stressed that the VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee. Unlike a direct tax, such as the income tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures.

Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of the tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax." (G.R. No. 151135, 2 July 2004, 433 SCRA 376, 384-385).

[38] *Rollo* (G.R. No. 172379), pp. 81-83.

accordance with Section 204 of the NIRC.[39] The CTA also suggested that petitioner should invoke its tax exemption to Petron before buying the petroleum products.[40] The CTA concluded that the right to claim for the refund of the excise taxes paid on the petroleum products lies with Petron which paid and remitted the excise taxes to the BIR.

The Issue

Petitioner submits this sole issue for our consideration: whether petitioner is the proper party to claim a refund for the excise taxes paid.[41]

The Ruling of the Court

The issue presented is not novel. In a similar case involving the same parties, this Court has categorically ruled that "the proper party to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another."[42] The Court added that "even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser."[43]

An excise tax is an indirect tax where the tax burden can be shifted to the consumer but the tax liability remains with the manufacturer or producer.

Section 129 of the NIRC provides that excise taxes refer to taxes imposed on specified goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise taxes are collected from manufacturers or producers before removal of

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[39] *Id.* at 83-84.

[40] *Id.* at 84.

[41] *Rollo* (G.R. No. 171383), p. 11; *rollo* (G.R. No. 172379), p. 14.

[42] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, 6 February 2008, 544 SCRA 100, 112.

[43] *Id.*

the domestic products from the place of production. Although excise taxes can be considered as taxes on production, they are really taxes on property as they are imposed on certain specified goods.[44]

Section 148(g) of the NIRC provides that there shall be collected on aviation jet fuel an excise tax of ₱3.67 per liter of volume capacity. Since the tax imposed is based on volume capacity, the tax is referred to as "specific tax."[45] However, excise tax, whether classified as specific or *ad valorem* tax, is basically an indirect tax imposed on the consumption of a specified list of goods or products. The tax is directly levied on the manufacturer upon removal of the taxable goods from the place of production but in reality, the tax is passed on to the end consumer as part of the selling price of the goods sold.[46]

In *Commissioner of Internal Revenue v. Philippine Long Distance Company*,[47] the Court explained the difference between a direct tax and an indirect tax:

> Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax.
>
> In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.
>
> On the other hand, ***indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else***. Stated elsewise, ***indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as***

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[44] DE LEON AND DE LEON, JR., *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED*, Volume 2 (2003), p. 198.

[45] Section 129, 1997 NIRC.

[46] De Leon and De Leon, Jr., *supra* at 199.

[47] G.R. No. 140230, 15 December 2005, 478 SCRA 61, 71-72.

when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered. (Emphasis supplied)

In *Maceda v. Macaraig, Jr.*, the Court specifically mentioned excise tax as an example of an indirect tax where the tax burden can be shifted to the buyer:

> On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the cash and/or "selling price."[48]

When Petron removes its petroleum products from its refinery in Limay, Bataan,[49] it pays the excise tax due on the petroleum products thus removed. Petron, as manufacturer or producer, is the person liable for the payment of the excise tax as shown in the Excise Tax Returns filed with the BIR. Stated otherwise, Petron is the taxpayer that is primarily, directly and legally liable for the payment of the excise taxes. However, since an excise tax is an indirect tax, Petron can transfer to its customers the amount of the excise tax paid by treating it as part of the cost of the goods and tacking it on to the selling price.

As correctly observed by the CTA, this Court held in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*:

> It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes part of the price which the purchaser must pay.[50]

Even if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers. The fact that Petron,

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[48] *Supra* note 35.

[49] Excise Tax Returns, CTA *rollo*, pp. 107, 109, 111, 113, 115, 117, 119.

[50] *Supra* note 19 at 1063.

on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent.

Petitioner, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform petitioner's status into a statutory taxpayer.

In the refund of indirect taxes, the statutory taxpayer is the proper party who can claim the refund.

Section 204(c) of the NIRC provides:

> Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. The Commissioner may —
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> x x x x x x x x x
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> (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund** within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis and underscoring supplied)

The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as "any person subject to tax." In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:

> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.[51]

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[51] G.R. No. 66838, 2 December 1991, 204 SCRA 377, 385.

The excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the "person subject to tax." In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the "person liable for tax." Petitioner is neither a "person liable for tax" nor "a person subject to tax." There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer.

Even if the tax is shifted by Petron to its customers and even if the tax is billed as a separate item in the aviation delivery receipts and invoices issued to its customers, Petron remains the taxpayer because the excise tax is imposed directly on Petron as the manufacturer. Hence, Petron, as the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR.

The *General Terms & Conditions for Aviation Fuel Supply* (Supply Contract) signed between petitioner (buyer) and Petron (seller) provide:

> **11.3** If Buyer is entitled to purchase any Fuel sold pursuant to the Agreement free of any taxes, duties or charges, **Buyer shall timely deliver to Seller a valid exemption certificate for such purchase**.[52] (Emphasis supplied)

This provision instructs petitioner to timely submit a valid exemption certificate to Petron in order that Petron will not pass on the excise tax to petitioner. As correctly suggested by the CTA, petitioner should invoke its tax exemption to Petron before buying the aviation jet fuel. Petron, however, remains the statutory taxpayer on those excise taxes.

Revenue Regulations No. 3-2008 (RR 3-2008) provides that "subject to the subsequent filing of a claim for excise tax credit/ refund or product replenishment, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as

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[52] CTA *rollo*, p. 137.

amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies."[53] The Department of Finance and the BIR recognize the tax exemption granted to international carriers but they consistently adhere to the view that manufacturers of articles subject to excise tax are the statutory taxpayers that are liable to pay the tax, thus, the proper party to claim any tax refunds.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the assailed Decisions dated 20 October 2005 and 5 January 2006 and the Resolutions dated 3 February 2006 and 18 April 2006 of the Court of Tax Appeals in C.T.A. Case Nos. 6217 and 6308, respectively.

SO ORDERED.

Austria-Martinez,[**] *Corona, Carpio Morales,*[***] and *Leonardo-de Castro, JJ.,* concur.

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[53] Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment, 22 January 2008.

[**] Designated member per Special Order No. 535.

[***] Designated member per Special Order No. 535.

SECOND DIVISION

[G.R. No. 172910. November 14, 2008]

SPOUSES LORETO LEYBA and MATEA LEYBA, *petitioners, vs.* **RURAL BANK OF CABUYAO, INC. and ZENAIDA REYES,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; LIBERAL APPLICATION OF THE RULE IN THE INTEREST OF SUBSTANTIAL JUSTICE. — Indeed, the circumstances in the instant case merit a reversal of the trial court's order of dismissal. It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from the constraints of technicalities. We note that the subject matter of the complaint is to petitioners a valuable parcel of land measuring 259 square meters. Petitioners stand to lose a lot on account of a mere technicality. They have manifested their interest to pursue the case even on appeal. They also have adequately explained their failure to attend the pre-trial conference. It has not been shown that a remand of the case for trial would cause undue prejudice to respondents. In the interest of substantive justice, we allow the petitioners an opportunity to present their side during a trial on the merits, to obviate jeopardizing substantive justice. This liberality underscores the importance of an appeal in our judicial grievance structure to give party-litigants the amplest opportunity for the just disposition of their cause freed from the noose of technicalities. As held in *RN Development, Inc. v. A.I.I. System, Inc*.: While a court can dismiss a case on the ground of *non prosequitur*, the real test of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss.

APPEARANCES OF COUNSEL

Michael E. Vito for petitioners.
Virgilio B. Galeon for Rural Bank of Cabuyao, Inc.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 85410 entitled *Spouses Loreto Leyba and Matea Leyba v. Rural Bank of Cabuyao, Inc. and Zenaida Reyes*, which affirmed the Decision of the Regional Trial Court (RTC), Branch 92 in Calamba City in Civil Case No. 3148-01-C.

The Facts

Petitioners-spouses Loreto and Matea Leyba filed a complaint for Nullification of Real Estate Mortgage and Special Power of Attorney (SPA) against respondents Rural Bank of Cabuyao, Inc. (RBCI) and Zenaida Reyes. They alleged, among others, that: (1) they are the registered owners of a parcel of land in Calamba, Laguna; (2) Reyes enticed Matea to work in Japan subject to a Php 150,000 placement fee; (3) Matea was made to sign an SPA, granting Reyes the authority to mortgage the subject land in exchange for a Php 50,000 loan for the placement fee; and (4) Reyes used the SPA to obtain a Php 500,000 loan from RBCI guaranteed by a real estate mortgage over the subject land.

A pre-trial conference was set for April 1, 2005. Petitioners and their counsel, however, failed to attend it. The RTC, thus, dismissed the complaint for lack of interest to further prosecute the case.[1] Petitioners' motion for reconsideration was denied by the RTC on June 15, 2005.

On their appeal to the CA, petitioners asserted that the trial court erred in (1) dismissing Civil Case No. 3148-01-C for "lack

[1] *Rollo*, p. 95. The Order was penned by Pairing Judge Romeo C. De Leon.

of interest to further prosecute" and (2) denying petitioners' motion for reconsideration.

The CA's Ruling

The CA ruled that the petition had no merit.[2] It cited Section 5, Rule 18 of the Rules of Civil Procedure, which provides that the plaintiff's failure to appear at the pre-trial when so required shall be a cause for dismissal of the action and such dismissal shall be with prejudice, unless otherwise ordered by the court. The CA observed that petitioners did not submit medical certificates to support their claim that their failure to attend the pre-trial conference was due to hypertension. The records also show that they wrote their lawyer telling the latter to withdraw the case.

The CA, thus, affirmed the assailed RTC orders.

Petitioners raise the following issues in this recourse: (1) whether the CA erred in not granting an extension to file a motion for reconsideration; (2) whether petitioners' failure to attend the scheduled pre-trial warrants the dismissal of the complaint; and (3) whether the trial court may dismiss the complaint on the ground of lack of interest to prosecute despite one of the defendants having already been declared in default.

On July 24, 2006, this Court required respondents to comment on the petition. On February 21, 2007, we required Reyes to show cause why she should not be disciplinarily dealt with or held in contempt for failing to file a comment on the petition. On September 10, 2007, we resolved to await the comment of RBCI in view of its counsel's Notice of Withdrawal as Counsel dated September 13, 2006. In view of the refusal of respondents to file their comment on the petition, we consider their right to comment as waived.

This Court's Ruling

Petitioners claim that the dismissal of their case on a pure technicality would be highly unfair.

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[2] *Id*. at 41-49. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe.

Indeed, the circumstances in the instant case merit a reversal of the trial court's order of dismissal. It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from the constraints of technicalities.[3] It is undisputed that petitioners were present in all the scheduled pre-trial conferences, except for the last one set on April 1, 2005. The postponement of the pre-trial was made several times upon agreement by the parties and once upon motion of RBCI. Petitioners claim that they are both advance in age and that, on April 1, 2005, their blood pressure shot up. They reason that the lack of medical certificates explaining their medical condition was due to their non-consultation with a physician as they opted to take sufficient rest instead.

We note that the subject matter of the complaint is to petitioners a valuable parcel of land measuring 259 square meters. Petitioners stand to lose a lot on account of a mere technicality. They have manifested their interest to pursue the case even on appeal. They also have adequately explained their failure to attend the pre-trial conference. It has not been shown that a remand of the case for trial would cause undue prejudice to respondents. In the interest of substantive justice, we allow the petitioners an opportunity to present their side during a trial on the merits, to obviate jeopardizing substantive justice. This liberality underscores the importance of an appeal in our judicial grievance structure to give party-litigants the amplest opportunity for the just disposition of their cause freed from the noose of technicalities.

As held in *RN Development, Inc. v. A.I.I. System, Inc.*:

> While a court can dismiss a case on the ground of *non prosequitur*, the real test of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff,

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[3] *Vette Industrial Sales Co., Inc. v. Cheng*, G.R. Nos. 170232 & 170301, December 5, 2006, 509 SCRA 532, 543.

as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss.[4]

WHEREFORE, the petition is *GRANTED*. The Decision of the CA is *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the RTC of origin for further proceedings.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174012. November 14, 2008]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **BENJAMIN TUDTUD, BIENVENIDO TUDTUD, DAVID TUDTUD, JUSTINIANO BORGA, JOSE BORGA, and FE DEL ROSARIO, represented by LYDIA ADLAWAN, Attorney-in-fact,** *respondents*.

SYLLABUS

1. CIVIL LAW; CONTRACTS; STATUTE OF FRAUDS; APPLIES ONLY TO EXECUTORY CONTRACTS; IT DOES NOT APPLY TO CONTRACTS WHICH HAVE BEEN COMPLETELY OR PARTIALLY PERFORMED; RATIONALE. — The MCIAA nevertheless urges this Court to reject respondents' testimonial evidence, citing Article 1403 (2)(e) of the Civil Code which places agreements for the sale

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[4] G.R. No. 166104, June 26, 2008; citing *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 117385, February 11, 1999, 303 SCRA 19.

[*] Acting Chief Justice as per Special Order No. 532 dated November 7, 2008.

of real property or **an interest therein** within the coverage of the Statute of Frauds. The Statute of Frauds applies, however, only to executory contracts. It does not apply to contracts which have been completely or partially performed, the rationale thereof being as follows: x x x In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already delivered by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.

2. ID.; ID.; ID.; THE MODE OF ACQUISITION FOR PUBLIC PURPOSE OF A LAND, WHETHER BY EXPROPRIATION OR BY CONTRACT, IS NOT MATERIAL IN DETERMINING WHETHER THE ACQUISITION IS WITH OR WITHOUT CONDITION; THE RIGHTS AND DUTIES BETWEEN PETITIONER AND RESPONDENTS ARE GOVERNED BY ARTICLE 1190 OF THE CIVIL CODE. — A word on MCIAA's argument that *MCIAA v. Court of Appeals*, *supra*, does not apply to the present case. As reflected in the earlier-quoted ruling in *Fery*, the mode of acquisition for public purpose of a land — whether by expropriation or by contract — is not material in determining whether the acquisition is with or without condition. In fine, the decision in favor of respondents must be affirmed. The rights and duties between the MCIAA and respondents are governed by Article 1190 of the Civil Code which provides: When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received. In case of the loss, deterioration, or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article [Article 1189] shall be applied to the party who is bound to return.

3. ID.; ID.; ID.; RIGHTS AND OBLIGATIONS OF THE PARTIES AS A CONSEQUENCE OF THE RECONVEYANCE OF THE SUBJECT LAND TO RESPONDENTS. — While the MCIAA is obliged to reconvey Lot No. 988 to respondents, respondents

must return to the MCIAA what they received as just compensation for the expropriation of Lot No. 988, plus legal interest to be computed from default, which in this case runs from the time the MCIAA complies with its obligation to the respondents. Respondents must likewise pay the MCIAA the necessary expenses it may have incurred in sustaining Lot No. 988 and the monetary value of its services in managing it to the extent that respondents were benefited thereby. Following Article 1187 of the Civil Code, the MCIAA may keep whatever income or fruits it may have obtained from Lot No. 988, and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime. In accordance with the earlier-quoted Article 1190 of the Civil Code *vis-à-vis* Article 1189 which provides that "[i]f a thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x," respondents, as creditors, do not have to settle as part of the process of restitution the appreciation in value of Lot 988 which is a natural consequence of nature and time.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Gica Del Socorro Espinoza Villarmia Tan & Fernandez for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The predecessors-in-interest of respondents Benjamin Tudtud, *et al*. were the owners of a parcel of land in Cebu City, identified as Lot No. 988 of the Banilad Estate and covered by Transfer Certificate of Title (TCT) No. 27692.

In 1949, the National Airports Corporation (NAC), a public corporation of the Republic of the Philippines, embarked on a program to expand the Cebu Lahug Airport. For this purpose, it sought to acquire, by negotiated sale or expropriation, several lots adjoining the then existing airport.

By virtue of a judgment rendered by the third branch of the Court of First Instance in Civil Case No. R-1881, the NAC acquired Lot No. 988, among other lots. TCT No. 26792 covering Lot No. 988 was thus cancelled and TCT No. 27919 was issued in its stead in the name of the Republic of the Philippines. No structures related to the operation of the Cebu Lahug Airport were constructed on Lot No. 988.

Lot No. 988 was later transferred to the Air Transport Office (ATO), and still later to petitioner Mactan Cebu International Airport Authority (MCIAA) in 1990 via Republic Act No. 6958.

When the Mactan International Airport at Lapu Lapu City was opened for commercial flights, the Cebu Lahug Airport was closed and abandoned and a significant area thereof was purchased by the Cebu Property Ventures, Inc. for development as a commercial complex.

By letter of October 7, 1996 to the general manager of the MCIAA, Lydia Adlawan, acting as attorney-in-fact of the original owners of Lot No. 988, demanded to repurchase the lot at the same price paid at the time of the taking, without interest, no structures or improvements having been erected thereon and the Cebu Lahug Airport having been closed and abandoned, hence, the purpose for which the lot was acquired no longer existed.[1]

As the demand remained unheeded, respondents, represented by their attorney-in-fact Lydia Adlawan, filed a Complaint[2] before the Regional Trial Court (RTC) of Cebu City, docketed as Civil Case No. CEB-19464, for reconveyance and damages with application for preliminary injunction/restraining order against the MCIAA.

Respondents anchored their complaint on the assurance they claimed was made by the NAC that the original owners and/or their successors-in-interest would be entitled to repurchase the

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[1] Exhibit "D", records, p. 11.

[2] *Id.* at 1-8.

lot when and in the event that it was no longer used for airport purposes.[3]

In its Answer with Counterclaim,[4] the MCIAA countered that, *inter alia*, the decision in Civil Case No. R-1881 did not lay any condition that the lots subject of expropriation would revert to their owners in case the expansion of the Cebu Lahug Airport would not materialize.[5]

To prove their claim, respondents presented witnesses who testified that the NAC promised their predecessors-in-interest-original owners of Lot No. 988 that it would be returned to them should the expansion of the Cebu Lahug Airport not materialize.[6] And respondents invoked this Court's ruling in *MCIAA v. Court of Appeals*[7] involving another lot acquired by the NAC for the expansion of the Cebu Lahug Airport. In that case, although the deed of sale between the therein respondent Melba Limbaco's predecessor-in-interest and NAC did not contain a provision for the repurchase of the therein subject lot should the purpose for its acquisition ceased to exist, this Court allowed Melba Limbaco to recover the lot based on parole evidence that the NAC promised the right of repurchase to her predecessor-in-interest.[8]

The MCIAA disputed the applicability to the present case of the immediately-cited *MCIAA* ruling, the NAC having acquired Lot No. 988 not by a deed of sale but by virtue of a final judicial decree of expropriation which cannot be modified by parole evidence.[9]

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[3] *Id.* at 2.

[4] *Id.* at 40-47.

[5] *Id.* at 43.

[6] TSN, March 18, 1997, pp. 25-36; TSN, May 14, 1997, pp. 2-11; TSN, June 9, 1997, pp. 2-10.

[7] G.R. No. 121506, October 30, 1996, 263 SCRA 736. *Vide* records, pp. 96, 130-138, 154, 194-195.

[8] *MCIAA v. Court of Appeals*, *id.* at 741-744.

[9] Records, pp. 183-185.

After trial, Branch 20 of the Cebu City RTC rendered judgment in favor of respondents, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs as against defendant ordering the latter to reconvey the entire subject real property covered by T.C.T. No. 27919 within 15 days from receipt of this decision.
>
> SO ORDERED.[10] (Underscoring supplied)

On appeal,[11] the Court of Appeals, by Decision of May 8, 2006[12] affirmed the RTC decision. Its Motion for Reconsideration[13] having been denied,[14] the MCIAA filed the present petition,[15] faulting the appellate court in "disregarding" the following considerations:

> I.
>
> THE JUDGMENT OF EXPROPRIATION IN CIVIL CASE NO. R-1881 WAS ABSOLUTE AND UNCONDITIONAL.
>
> II.
>
> RESPONDENTS' CLAIM OF ALLEGED VERBAL ASSURANCES FROM THE GOVERNMENT VIOLATES THE STATUTE OF FRAUDS.
>
> III.
>
> THE BEST EVIDENCE SHOWING THE UNCONDITIONAL ACQUISITION OF LOT 988 IS THE CERTIFICATE OF TITLE.[16] (Underscoring supplied)

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[10] *Id.* at 204.

[11] *Id.* at 205-206.

[12] Penned by Court of Appeals Associate Justice Vicente L. Yap, with the concurrence of Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr. CA *rollo*, pp. 169-180.

[13] *Id.* at 195-206.

[14] *Id.* at 211-213.

[15] *Rollo*, pp. 25-44.

[16] *Id.* at 32.

In insisting that the judgment in Civil Case No. R-1881 was absolute and unconditional, the MCIAA cites *Fery v. Municipality of Cabanatuan*[17] which held that:

> x x x If x x x the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings.
>
> When land has been acquired for public use in *fee simple*, *unconditionally*, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.[18] (Italics in the original; underscoring supplied)

MCIAA in fact offers the text of the trial court's decision in R-1881, inviting attention to the dispositive portion thereof, to prove that the judgment of expropriation entered in favor of the government is absolute and unconditional, and that there is nothing in the decision that would show that the government made any assurance or stipulation whatsoever to reconvey the subject lot in case the expansion of the Lahug airport would not materialize.[19]

But also in *Fery*, this Court, passing on the question of whether a private land which is expropriated for a particular public use, but which particular public use is abandoned, may be returned to its former owner, held:

> The answer to that question depends upon the character of the title acquired by the expropriator x x x. If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its

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[17] 42 Phil. 28 (1921).

[18] *Id.* at 30. (Citations omitted).

[19] Exhibit "1", records, pp. 101-127; Exhibit "1-A", records, pp. 125-127; records, p. 169.

former owner, then, of course, when the purpose is terminated or abandoned, the former owner reacquires the property so expropriated. If, for example, land is expropriated for a public street and the expropriation is granted upon conditions that the city can *only* use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary. [20] (Underscoring supplied)

That nothing in the trial court's decision in Civil Case No. R-1881 indicates a condition attached to the expropriation of the subject lot, this Court, in *Heirs of Timoteo Moreno v. MCIAA*[21] involving the rights of another former owner of lots also involved in Civil Case No. R-1881, noting the following portion of the body of the said trial court's decision:

As for the public purpose of the expropriation proceeding, it cannot now be doubted. Although the Mactan Airport is being constructed, it does not take away the actual usefulness and importance of the Lahug Airport: it is handling the air traffic both civilian and military. From it aircrafts fly to Mindanao and Visayas and pass through it on their return flights to the North and Manila. Then, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter. It is for the other departments of the Government to determine said matters. The Court cannot substitute its judgment for those of the said departments and agencies. In the absence of such a showing, the Court will presume that the Lahug Airport will continue to be in operation,[22]

held:

While the trial court in Civil Case No. R-1881 could have simply acknowledged the presence of public purpose for the exercise of eminent domain regardless of the survival of Lahug Airport, the trial court in its *Decision* chose not to do so but instead prefixed its finding of public purpose upon its understanding that "*Lahug Airport will continue to be in operation*." Verily, these meaningful statements

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[20] *Supra* note 17 at 29-30.

[21] 459 Phil. 948 (2003).

[22] Exhibit "C," records, p. 109.

in the body of the *Decision* warrant the conclusion that the expropriated properties would remain to be so until it was confirmed that Lahug Airport was no longer "*in operation.*" This inference further implies two (2) things: (a) after the Lahug Airport ceased its undertaking as such and the expropriated lots were not being used for any airport expansion project, the rights *vis-à-vis* the expropriated Lots Nos. 916 and 920 as between the State and their former owners, petitioners herein, **must be equitably adjusted**; and, (b) **the foregoing unmistakable declarations in the body of the *Decision* should merge with and become an intrinsic part of the *fallo* thereof which under the premises is clearly inadequate since the dispositive portion is not in accord with the findings as contained in the body thereof**.[23]

On the *Heirs of Moreno's* motion for reconsideration, this Court affirmed its decision, emphasizing that "the *fallo* of the decision in Civil Case No. R-1881 must be read in reference to the other portions of the decision in which it forms a part[,]"[24] and that "[a] reading of the Court's judgment must not be confined to the dispositive portion alone; rather, it should be meaningfully construed in unanimity with the *ratio decidendi* thereof to grasp the true intent and meaning of a decision."[25]

The MCIAA goes on, however, to cite *MCIAA v. Court of Appeals and Chiongbian*[26] wherein this Court rejected testimonial evidence of an assurance of a right to repurchase property acquired by the NAC under the judgment in still the same Civil Case No. R-1881. The MCIAA's reliance on this case is misplaced. As this Court noted in *Heirs of Timoteo Moreno v. MCIAA*,[27] the respondent *Chiongbian* put forth inadmissible and inconclusive evidence, *Chiongbian's* testimony as well as that of her witness as to the existence of the agreement being hearsay.[28]

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[23] *Heirs of Moreno v. MCIAA*, 459 Phil. 948, 963 (2003).

[24] *Heirs of Timoteo Moreno and Maria Rotea v. MCIAA*, G.R. No. 156273, August 9, 2005, 466 SCRA 285, 305.

[25] *Ibid*.

[26] 399 Phil. 695 (2000).

[27] *Supra* note 21.

[28] *MCIAA v. Court of Appeals*, *supra* note 26 at 708-710.

In contrast, in the case at bar, respondents' witness respondent Justiniano Borga himself, who represented his mother-one of the original owners of subject lot during the negotiations between the NAC and the landowners, declared that the original owners did not oppose the expropriation of the lot upon the assurance of the NAC that they would reacquire it if it is no longer needed by the airport.[29]

Another witness for respondent, Eugenio Amores, an employee of the NAC, declared that in the course of some meetings with the landowners when he accompanied the NAC legal team and was requested to jot down what transpired thereat, he personally heard the NAC officials give the assurance claimed by respondents.[30]

The MCIAA nevertheless urges this Court to reject respondents' testimonial evidence, citing Article 1403 (2)(e) of the Civil Code which places agreements for the sale of real property or **an interest therein** within the coverage of the Statute of Frauds.

The Statute of Frauds applies, however, only to executory contracts.[31] It does not apply to contracts which have been completely or partially performed,[32] the rationale thereof being as follows:

> x x x In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already delivered by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.[33] (Underscoring supplied)

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[29] *Vide* TSN, May 14, 1997, pp. 4-7.

[30] TSN, June 9, 1997, p. 5.

[31] *Vide Asia Production Co., Inc. v. Paño*, G.R. No. 51058, January 27, 1992, 205 SCRA 458, 467.

[32] *Id.* at 466.

[33] *Ibid.* Citation omitted.

A word on MCIAA's argument that *MCIAA v. Court of Appeals, supra*, does not apply to the present case. As reflected in the earlier-quoted ruling in *Fery*, the mode of acquisition for public purpose of a land — whether by expropriation or by contract — is not material in determining whether the acquisition is with or without condition.

In fine, the decision in favor of respondents must be affirmed. The rights and duties between the MCIAA and respondents are governed by Article 1190 of the Civil Code[34] which provides:

> When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.
>
> In case of the loss, deterioration, or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article [Article 1189] shall be applied to the party who is bound to return.
>
> x x x x x x x x x

While the MCIAA is obliged to reconvey Lot No. 988 to respondents, respondents must return to the MCIAA what they received as just compensation for the expropriation of Lot No. 988, plus legal interest to be computed from default,[35] which in this case runs from the time the MCIAA complies with its obligation to the respondents.[36]

Respondents must likewise pay the MCIAA the necessary expenses it may have incurred in sustaining Lot No. 988 and

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[34] *Heirs of Moreno v. MCIAA, supra* note 21 at 967.

[35] *Vide Heirs of Timoteo Moreno and Maria Rotea v. MCIAA*, G.R. No. 156273, August 9, 2005, 466 SCRA 288, 306; *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[36] Civil Code, Article 1169:

> x x x x x x x x x
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills its obligation, delay by the other begins.

the monetary value of its services in managing it to the extent that respondents were benefited thereby.

Following Article 1187[37] of the Civil Code, the MCIAA may keep whatever income or fruits it may have obtained from Lot No. 988, and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime.

In accordance with the earlier-quoted Article 1190 of the Civil Code *vis-à-vis* Article 1189 which provides that "[i]f a thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x," respondents, as creditors, do not have to settle as part of the process of restitution the appreciation in value of Lot 988 which is a natural consequence of nature and time.

WHEREFORE, the petition is, in light of the foregoing disquisition, *DENIED*. The May 8, 2006 Decision of the Court of Appeals affirming that of Branch 20 of the Cebu City Regional Trial Court is *AFFIRMED with MODIFICATION* as follows:

1. Respondents are *ORDERED* to return to the MCIAA the just compensation they received for the expropriation of Lot No. 988 plus legal interest in the case of default, to be computed from the time the MCIAA complies with its obligation to reconvey Lot No. 988 to them;

2. Respondents are *ORDERED* to pay the MCIAA the necessary expenses it incurred in sustaining Lot No. 988 and the monetary value of its services to the extent that respondents were benefited thereby;

3. The MCIAA is *ENTITLED* to keep whatever fruits and income it may have obtained from Lot No. 988; and

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[37] Civil Code, Article 1187:

The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated.

Vide Heirs of Moreno v. MCIAA, supra note 26 at 968.

4. Respondents are also *ENTITLED* to keep whatever interests the amounts they received as just compensation may have earned in the meantime, as well as the appreciation in value of Lot No. 988 which is a natural consequence of nature and time;

In light of the foregoing modifications, the case is *REMANDED* to Branch 20 of the Regional Trial Court of Cebu City only for the purpose of receiving evidence on the amounts that respondents will have to pay to the MCIAA in accordance with this Court's decision.

SO ORDERED.

Quisumbing, Acting C.J., (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175894. November 14, 2008]

NYK-FIL SHIP MANAGEMENT, INC., and/or JOSEPHINE J. FRANCISCO and TMM CO. LTD., TOKYO, JAPAN, *petitioners, vs.* **ALFONSO T. TALAVERA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POEA STANDARD EMPLOYMENT CONTRACT OF 2000; COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS; WHILE COMPANY PHYSICIAN IS TO DECLARE SEAMAN SUFFERING PERMANENT DISABILITY DURING EMPLOYMENT, SEAFARER MAY SEEK SECOND OPINION. — Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides: **SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND**

ILLNESS. The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: x x x 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. **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. This provision substantially incorporates the 1996 POEA Standard Employment Contract. Passing on the 1996 POEA Standard Employment Contract, this Court held that "[w]hile it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion," hence, the Contract "recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice."

2. ID.; ID.; ID.; FOR DISABILITY TO BE COMPENSABLE, IT MUST BE WORK RELATED INJURY OR ILLNESS. — For disability to be compensable under Section 20 (B) of the 2000 POEA Standard Employment Contract, it must be the result of a work-related injury or illness, unlike the 1996 POEA Standard Employment Contract in which it was sufficient that the seafarer suffered injury or illness during the term of his employment. The 2000 POEA Standard Employment Contract defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

3. ID.; ID.; ID.; ID.; ELABORATED IN THE CASE OF *MORE MARITIME AGENCIES, INC. VS. NLRC.* — In *More Maritime Agencies, Inc. v. NLRC,* this Court, noting that the therein private respondent's job required him to enter a manhole accessible only in a crouching position and carry a 20-liter canister to collect carbon, mud, and oil deposited inside the cylinders of the ship's air trunk, found that his chronic low back pain, which indicated a slipped disc, was work-related. This Court, addressing the therein petitioner's argument that the therein respondent's chronic low back pain was due to a pre-existing condition, expounded on the nature of a work-related injury or illness: x x x Compensability of an ailment does not depend on whether the injury or disease was pre-existing at the time of the employment but rather if the disease or injury is **work-related** or **aggravated his condition**. It is indeed safe to ***presume*** that, at the very least, the arduous nature of Hormicillada's employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be free from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person.

APPEARANCES OF COUNSEL

Carag Caballes Jamora & Somera Law Offices for petitioners.
Romulo P. Valmores for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Alfonso T. Talavera (respondent) entered into a nine-month contract of employment with petitioner NYK-Fil Ship Management, Inc. (NYK-Fil) and/or Josephine J. Francisco, acting for and in

behalf of petitioner TMM Co., Ltd. – Tokyo, Japan, as a fitter on board the *M.T. Tachiho* vessel. As a fitter, he performed repair and maintenance and welding works which called for him to move heavy equipment and materials.

After respondent started working in June 2003, he, on several occasions, felt slight pains in his back and other parts of his body. He thus had frequent consultations with the ship medical officer who gave him analgesics. The pain persisted and became more severe as it radiated to his feet, hence, he consulted a clinic in Oman on August 16, 2003 and was diagnosed to have ureteric colic with urinary tract infection.

The following day or on August 17, 2003, respondent was repatriated to the Philippines following which he consulted the Sachly International Health Partners, Inc. (SHIP), a company-designated clinic, which diagnosed him to have lumbar strain with plantar fascitis and urinary tract infection.

Respondent thus went through daily physical rehabilitation therapy. After undergoing a Magnetic Resonance Imaging (MRI) and other tests, he was finally diagnosed to have "chronic bilateral L6 radiculopathies probably secondary to a lumbar canal" and "motility-like dyspepsia." He was later deemed fit to resume sea duties by specialists of the SHIP.[1]

Respondent sought a second opinion from an orthopedic expert who diagnosed him to have "lumbar spondylopathy, lumbar disk protrusion, L5-S1" and declared him unfit for further sea duties.[2] The doctor recommended a partial permanent disability with Grade 8 impediment based on the Philippine Overseas Employment Administration (POEA) Contract.[3]

Respondent thereupon sought to claim illness allowance and disability benefits from petitioners. His claim was denied in view of the declaration by the company-designated physicians

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[1] NLRC records, p. 42.

[2] *Id.* at 63-65.

[3] *Id.* at 64.

that he was fit to work, drawing respondent to file a complaint[4] against petitioners, docketed as NLRC-NCR Case No. (M) 04-05-01242-00, for disability benefits, illness allowance, damages and attorney's fees, invoking Sections 1 and 3 of Article XXI of the Collective Bargaining Agreement (CBA) between the All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines and Global Marine Co., Ltd. as well as Sections 20 (B) (3) and 20 (B) (6) of the POEA Standard Employment Contract.[5]

By Decision[6] of June 28, 2005, the Labor Arbiter, finding that respondent was "not yet fit to perform his usual task as fitter" and noting that he had been declared unfit for further sea duty, awarded him "100% compensation as disability benefit" in the amount of $88,000 inclusive of attorney's fees. It denied, however, his prayer for illness allowance and damages, such allowance having already been paid and the claim for damages not having been justified.[7]

Petitioners alleged to have received the Labor Arbiter's decision on July 13, 2005 and thus had until July 23, 2005 to file their memorandum on appeal. July 23, 2005 being a Saturday and the following Monday, July 25, 2005, being a special non-working holiday, petitioners filed their Memorandum on Appeal[8] on July 26, 2005 before the National Labor Relations Commission (NLRC).

The NLRC dismissed petitioners' appeal for having been filed out of time,[9] it finding that "per Registry Receipt address[ed] to [petitioners' counsel]," copy of the Labor Arbiter's decision was received by them on July 12, 2005, hence, "the ten (10) day reglementary period within which to perfect an appeal was up to July 22, 2005."

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[4] *Id.* at 2.

[5] *Id.* at 54-55.

[6] *Id.* at 128-132.

[7] *Id.* at 132.

[8] *Id.* at 136-147.

[9] *Id.* at 322-324.

Petitioners filed a Motion for Reconsideration of the NLRC order, their counsel contending that:

> x x x The aforementioned decision by the Labor Arbiter was received by the Makati Central Post Office on 12 July 2005 but the same was not delivered to the undersigned law office until 13 July 2005 by Letter Carrier JACOB ZETA. Attached hereto as Annex "A" is a certification issued by Ms. Emily A. Gianan, Chief, Administrative Unit of the Makati Central Post Office stating that the records of their office reflect the undersigned's manifestation that the decision was received by JANICE CANTALOPEZ [of the office of petitioners' counsel] on 13 July 2005, as stated in [petitioners'] Memorandum on Appeal dated 26 July 2005.
>
> As the Honorable Commission is well aware, 25 July 2005 was declared a special non-working holiday. Thus, the filing by the Respondents-Appellants of their Memorandum on Appeal on the next working day, 26 July 2005, was timely and indubitably within the reglementary period.[10] (Underscoring supplied)

The NLRC denied petitioners' Motion for Reconsideration by Resolution of January 31, 2006, declaring that:

> x x x [T]he appeal was filed out of time based on the Registry Return Receipt returned by the Post Office to this Commission, which forms part of the records of the case showing that a copy of the decision was **received by respondents['] counsel on July 12, 2005**, and not on July 13, 2005 as alleged in respondents' Motion for Reconsideration. The certification of Ms. Emily A. Gianan of the Makati Central Post office cannot invalidate the same official Registry Return Receipt that the very same post office sent back to this Commission showing the date of receipt by respondents['] counsel as July 12, 2005 on the face thereof.[11] (Emphasis and underscoring supplied)

Petitioners thereupon filed a Petition for *Certiorari* before the Court of Appeals,[12] their counsel alleging that:

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[10] *Id.* at 330.

[11] *Id.* at 338 (erroneously numbered p. 343). *Vide* p. 135.

[12] CA *rollo*, pp. 2-16.

> x x x Upon being confronted with the registry return card after the denial of Petitioners' Motion for Reconsideration by Public Respondent, Ms. Cantalopez [of the office of petitioners' counsel] realized that she had inadvertently and mistakenly entered the date "12" and not "13". She had actually received the decision of the Labor Arbiter on 13 July 2005 and had later that same day recorded that date accurately on the undersigned's copy of the Decision and in an "incoming" logbook, along with other incoming correspondences addressed to the undersigned law firm, before routing these to the appropriate attorney's, as is the Firm's standard practice and internal operating procedure. This may be considered as akin to a mere typographical error and should not be given the extreme punishment of dismissal of Petitioner's Appeal. x x x[13] (Underscoring supplied)

Attached to the petition was the affidavit of Cantalopez of the office of petitioners' counsel and a copy of the pertinent page of the logbook of the same office[14] reflecting the receipt on July 13, 2005 of the Labor Arbiter's decision.

The Court of Appeals dismissed the petition for, *inter alia*, failure to show that Marcelo R. Rañenes (Rañeses), Vice President of petitioner NYK-FIL Ship Management who signed the verification and certification of non-forum shopping, was authorized to sign for and in behalf of the said company.[15] Petitioners filed a Motion for Reconsideration,[16] attaching a copy of the Board Resolution of NYK-Fil Ship Management, Inc. authorizing Rañeses to sign the required verification and certification "at any stage of the subject case." Their motion was denied,[17] hence, the present Petition[18] raising the sole issue of:

> WHETHER A TOTALLY NEW BOARD RESOLUTION AUTHORIZING A CORPORATE OFFICER TO SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM

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[13] *Id.* at 8-9.

[14] *Id.* at 59-60.

[15] *Id.* at 72.

[16] *Id.* at 73-88.

[17] *Id.* at 472-473.

[18] *Rollo*, pp. 3-26.

SHOPPING IS SPECIFICALLY REQUIRED IN THE FILING OF A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 65, BEFORE THE COURT OF APPEALS, EVEN IF A PREVIOUS BOARD RESOLUTION HAD ALREADY BEEN ISSUED IN FAVOR OF THE VERY SAME CORPORATE OFFICER AUTHORIZING HIM TO SIGN FOR AND IN BEHALF OF THE COMPANY "AT ANY STAGE" OF THE CASE.[19]

Annexed to the petition is a Secretary's Certificate attesting to the conduct of a special meeting of the Board of Directors of petitioner NYK-Fil Ship Management, Inc. in which said petitioner "is now ratifying the actions of its Vice President Rañeses and submit such ratification to this Honorable Supreme Court."[20]

The law allows a corporation to ratify the unauthorized acts of its corporate officer.[21] With the ratification by petitioner NYK-Fil of Rañeses' accomplishing of the verification and certification of non-forum shopping which accompanied petitioners' petition for *certiorari* before the Court of Appeals, said petitioner had substantially complied with the requirements of the law. Any defect in the signing of the verification and certification of non-forum shopping is thus deemed cured. If this Court had, in some instances, allowed the belated filing of the certification against forum shopping, or even excused the non-compliance therewith, this Court *a fortiori* should allow the timely submission of such requirements, albeit the proof of the authority of the signatory was put forward only after.[22]

While the normal course of action would be to remand the case to the appellate court for decision on the merits, it is well

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[19] *Id.* at 12.

[20] *Id.* at 19, 26.

[21] CIVIL CODE Article 1910 ("x x x As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly."); *vide Yasuma v. Heirs of Cecilio S. De Villa*, G.R. No. 150350, August 22, 2006, 499 SCRA 466, 471-472.

[22] *Vide Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 337; *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 996 (2001).

within the conscientious exercise of this Court's broad review powers to choose to render judgment on the merits, all material facts having been duly laid before it as would buttress its ultimate conclusion, in the public interest and for the expeditious administration of justice.

Petitioners insist that they received notice of the Labor Arbiter's decision on July 13, 2005 and not on July 12, 2005 as indicated by their counsel's employee Cantalopez in the Registry Return Card. It is a generally accepted rule that when service is made by registered mail, the service is deemed complete and effective upon actual receipt by the addressee as shown by the Registry Return Card.[23] Between the Registry Return Card on one hand, and the Certification issued by Ms. Emily A. Gianan, Chief, Administrative Unit of the Makati Central Post Office that copy of the Labor Arbiter's decision was served on petitioners' counsel on July 13, 2005 and the entry of petitioners' counsel's office logbook stating that copy of the decision was received on July 13, 2005, on the other, the Registry Return Card commands more weight.[24] The Registry Return Card is considered as the official record of the NLRC. It is presumed to be accurate, unless proven otherwise, unlike a written record or note of a party which is often self-serving and easily fabricated.[25]

Nevertheless, this Court deems it proper to relax procedural rules in the interest of substantial justice[26] in view of the partial merit of petitioners' appeal before the NLRC.

Before the NLRC petitioners raised the following issues:

I

WHETHER THE COMPLAINANT-APPELLEE IS ENTITLED TO DISABILITY BENEFITS, DESPITE THE FACT THAT THE

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[23] *Dela Cruz v. Ramiscal*, G.R. No. 137882, February 4, 2005, 450 SCRA 449, 456.

[24] *Vide ibid.*; *Baltazar v. Commission on Elections*, 403 Phil. 444, 450 (2001).

[25] *Vide ibid.*

[26] *Vide Remulla v. Manlongat*, 484 Phil. 832, 838-839 (2004).

COMPANY-DESIGNATED PHYSICIAN HAD ASSESSED HIM AS FIT TO RESUME SEA DUTIES.

II

WHETHER THE COMPLAINANT-APPELLEE IS ENTITLED TO DISABILITY BENEFITS, DESPITE THE FACT THAT HIS ILLNESS OR INJURY IS NOT WORK-RELATED.

III

WHETHER THE COMPLAINANT-APPELLEE IS ENTITLED TO DISABILITY BENEFITS, DESPITE THE FACT THAT HIS ILLNESS OR INJURY WAS NOT CAUSED BY AN ACCIDENT.

IV

WHETHER COMPLAINANT-APPELLEE IS ENTITLED TO ATTORNEY'S FEES.[27]

Respecting petitioners' argument that a company-designated physician declared respondent fit to resume sea duties, the right of a seafarer to seek a second opinion is recognized by the POEA Standard Employment Contract of 2000, the CBA governing the relationship between petitioners and respondent, and jurisprudence.

Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides:

SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

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.

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[27] NLRC records, pp. 139-140.

> 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. (Emphasis and underscoring supplied)

This provision substantially incorporates the 1996 POEA Standard Employment Contract. Passing on the 1996 POEA Standard Employment Contract, this Court held that "[w]hile it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion," hence, the Contract "recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice."[28]

The CBA governing the relationship between petitioners and respondent contains provisions similar to the aforecited provision of the POEA Standard Employment Contract of 2000, thus:

> SECTION 2. The disability suffered by the Seafarer shall be determined by a doctor appointed by the Company, and the Company shall provide disability compensation to the Seafarer in accordance with the percentage specified in the table below which is appropriate to this disability.
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> x x x x x x x x x
>
> SECTION 5. If a doctor appointed by the Union disagrees with the assessment of the Company doctor in SECTION 2, 3, or 4, a third doctor shall be mutually agreed between the Company and the

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[28] *Seagull Maritime Corp. v. Dee*, G.R. No. 165156, April 2, 2007, 520 SCRA 109, 117-119.

Union, and the decision of this doctor shall be binding on both parties.[29]

From the following findings of respondent's physician, respondent is entitled to the benefits under the POEA Standard Employment Contract of 2000:

IMPRESSION:

Lumbar spondylopathy
Lumbar disc protrusion, L5-S1

Mr. Talavera's back pain has improved since his physical therapy. However, he still experiences pain and discomfort with exertion. He also now has started to complain of numbness that radiates down his thighs. His diagnostic tests are significant for degenerative changes and disc protrusion which are conditions due to wear and tear. That is, with more exposure to activities producing back stress, more injuries, and disability are to be expected. He has lost his pre-injury capacity, and I now recommend a ***partial permanent disability*** with ***Grade 8 Impediment*** based on the POEA contract. He is ***UNFIT*** for further sea duties.

x x x x x x x x x

Degenerative disc disease is a wear and tear condition and is associated with degenerative changes in the articular cartilage. In the vertebral column, the fact joints are involved. A single episode of trauma may not initially be significant, but repeated trauma, such as excessive and strenuous physical activities may play a role.

Through degeneration, wear and tear or trauma, the annulus fibrosus containing the soft disc material (nucleus pulposus) may tear. This results in protrusion of the disc or even extrusion of disc material into the spinal canal or neural foramen. In addition, the nerve fibers of the affected root are also compressed and this situation leads to radiculopathy in the appropriate muscles. When the nerve roots become compressed, the herniated disc becomes significant. The most common complaint in patients with a herniated disc is that of severe low back pain developing immediately or within a few hours after an injury.

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[29] NLRC records, pp. 30-31.

The mainstay of therapy for a herniated lumbar disc is conservative treatment, that is, nonsurgical. The mechanism of injury is often an episode of trauma or a continued mechanical stress of postural or occupational type. Therefore, torsional stresses on the back, and activities such as lifting and repetitive bending should be avoided. The more these patients do, the more they hurt.

Prolonged relief is less likely if no permanent modification in the patient's activities is made. Over time, as the patient resumes his normal work of increased loading, twisting, or bending and extension of the back, the patient exposes himself to dangers of enhancing the herniated disc to a more severe form.

Mr. Talavera should therefore refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. His symptoms are also heightened by prolonged sitting and standing. His functional capacity has diminished making it unsafe for him to work at his previous occupation. He is ***UNFIT*** to resume his sea duties.[30] (Emphasis in the original; underscoring supplied)

Petitioners argue, however, that respondent's injury or illness is not work-related.[31] They rely on their designated physician's Reply to Medical Query, stating that respondent's conditions could also be attributed to age, genetics, weight, bone diseases, infections, and unknown factors.[32] They also call attention to Article XXI, Section 1 of the CBA which requires that disability be the result of an accident to be compensable.[33]

Indeed, under Section 1 of the CBA which reads:

SECTION 1: A Seafarer who suffers permanent disability as a result of an accident, regardless of fault but excluding injuries caused by a Seafarer's willful act, whilst in the employment of the Company, including accidents occurring while traveling to or from the Ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of the Agreement. The copy/ies of the medical certificate

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[30] *Id.* at 64-65.

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

[32] *Id.* at 97-99.

[33] *Id.* at 143-144.

and other relevant medical reports shall be made available by the Company to the Seafarer,[34]

disability must be the result of an accident to be compensable.

There is no proof that respondent incurred disability as a result of an accident. Neither is there proof, however, that, following Section 3 of Article XXI of the CBA which reads:

x x x x x x x x x

SECTION 3: Permanent Medical Unfitness — A Seafarer whose disability, in accordance with SECTION 1, is assessed at 50% or more under the attached APPENDIX B shall, for the purpose of this section be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, *i.e.* US$80,000 for officers and ratings above AB and US$60,000 for ratings, AB and below. Furthermore, any Seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the Company doctor, shall also be entitled to 100% compensation[35] (Underscoring supplied),

respondent had a rating above AB and that his disability was assessed at 50% or more under Appendix "B" of the CBA to merit the award of 100% compensation or $80,000 disability benefit and 10% thereof or $8,000 attorney's fees.

For disability to be compensable under Section 20 (B) of the 2000 POEA Standard Employment Contract, it must be the result of a work-related injury or illness,[36] unlike the 1996 POEA

[34] *Id.* at 30.

[35] *Id.* at 31.

[36] 2000 POEA Standard Employment Contract, Section 20(B) (6):

SECTION 20. COMPENSATION AND BENEFITS.

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS.

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

(6) In case of permanent or total disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the

Standard Employment Contract in which it was sufficient that the seafarer suffered injury or illness during the term of his employment.[37] The 2000 POEA Standard Employment Contract defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

In *More Maritime Agencies, Inc. v. NLRC*,[38] this Court, noting that the therein private respondent's job required him to enter a manhole accessible only in a crouching position and carry a 20-liter canister to collect carbon, mud, and oil deposited inside the cylinders of the ship's air trunk,[39] found that his chronic low back pain, which indicated a slipped disc, was work-related. This Court, addressing the therein petitioner's argument that the therein respondent's chronic low back pain was due to a pre-existing condition, expounded on the nature of a work-related injury or illness:

> x x x Compensability of an ailment does not depend on whether the injury or disease was pre-existing at the time of the employment but rather if the disease or injury is **work-related** or **aggravated** his condition. It is indeed safe to ***presume*** that, at the very least, the arduous nature of Hormicillada's employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be free from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health

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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 rules of compensation applicable at the time the disease or illness was contracted.

[37] 1996 POEA Standard Employment Contract, Section 20 (B).

[38] 366 Phil. 646 (1999).

[39] *Id.* at 649.

of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person.[40] (Underscoring, emphasis, and italics supplied)

In the case at bar, a reasonable connection between the respondent's injuries and the nature of his job has been established. Thus, as in the above cited case, it is safe to **presume** that the arduous nature of the respondent's job caused the respondent's illness or at least aggravated any pre-existing condition he might have had, and is thus work-related.

The earlier-quoted findings of respondent's physician indicate that "repeated trauma such as excessive and strenuous physical activities may play a role" in producing back stress, more injuries and disability, hence, his advice for respondent to "refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting" as he is "UNFIT to resume his sea duties."

Petitioners' physician herself stated that among the causes of respondent's conditions are trauma, biomechanical stress, and repeated motion on a joint.[41] Her observation that "there was no overt and direct assault or physical injury that may have contributed to the MRI findings of Mr. Talavera's lumbar spine"[42] and petitioners' argument that no record of an accident was presented[43] do not persuade. As respondent's physician explained, "A single episode of trauma may not initially be significant, but repeated trauma, such as excessive and strenuous physical activities may play a role."[44]

In their Reply[45] to respondent's Position Paper, petitioners did not contest or disprove respondent's claim that prior to June

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[40] *Id.* at 654-655.

[41] *Vide* NLRC records, pp. 97-99.

[42] *Id.* at 99.

[43] *Id.* at 144.

[44] *Id.* at 64.

[45] *Id.* at 81-87.

2003, he had concluded three contracts with them and that every time he was scheduled for deployment, he was subjected to medical examination by petitioners' designated physician and had always been declared "fit to work."[46] Petitioners failed too to refute, respondent's following claims:

> Complainant Talavera as Fitter performed repair and maintenance works, like hydraulic line return and other supply lines of the vessel; he did all the welding works and assist[ed] the First and Second Engineer during overhauling works of generators, engines and others [*sic*] engineering works as directed by lifting, carrying, pushing, pulling and moving heavy equipment and materials and constantly performed overtime works because the ship was old and always repair jobs are almost anywhere inside the vessel. He found himself with very few hours rest period.
>
> On several occasions due to his excessive arduous and stressful, both physical and mental works, he felt slight pains in his back and other parts of his body, [b]ut ignored the same due to the demands of his works and because his superiors are very strict with regards to [the] time table in a given task.[47] (Underscoring supplied)

Undoubtedly then, respondent is, under the 2000 POEA Standard Employment Contract, entitled to compensation. His disability benefit, on account of the priorly stated partial permanent disability with Grade 8 Impediment based on the 2000 POEA Standard Employment Contract, computed in accordance with Section 20 (B) (6)[48] *vis a vis* Section 32[49] of the 2000 Standard Employment Contract, thus:

US$50,000 x 33.59%

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[46] *Id.* at 49.

[47] *Id.* at 49-50.

[48] *Vide* note 36.

[49] Section 32, POEA 2000 Standard Employment Contract:

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x x x x x x

amounts to US$16,795. The attorney's fees awarded by the labor arbiter "equivalent to ten percent (10%) of the judgment award"[50] is thus reduced to US$1,679.50.

WHEREFORE, the assailed Resolutions of the Court of Appeals dated May 19, 2006 and December 4, 2006 are *SET ASIDE*.

The Decision of the Labor Arbiter dated June 28, 2005 is *AFFIRMED* with *MODIFICATION*. The disability benefit awarded to the respondent Alfonso T. Talavera is reduced to US$16,795 in accordance with Section 20 (B) (6) *vis a vis* Section 32 of the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Seafarers on Board Ocean Going Vessels, as amended by Department Order No. 4 and Memorandum Circular

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CHEST-TRUNK-SPINE

x x x x x x x x x

5. Moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk. Gr. 8

x x x x x x x x x

SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade			Impediment
1	US$50,000	x	120.00%
2	"	x	88.81%
3	"	x	78.36%
4	"	x	68.66%
5	"	x	58.96%
6	"	x	50.00%
7	"	x	41.80%
8	"	x	33.59%
9	"	x	26.12%
10	"	x	14.93%
11	"	x	10.45%
12	"	x	6.72%
13	"	x	6.72%
14	"	x	3.74%

To be paid in Philippine currency equivalent at the exchange rate prevailing during the time of payment. (Underscoring supplied)

[50] NLRC records, p. 132.

No. 9, both series of 2000. The award of attorney's fees is correspondingly reduced to US$1,679.50.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176169. November 14, 2008]

ROSARIO NASI-VILLAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; REAL NATURE OF CRIME CHARGED IS DETERMINED BY THE ACTUAL RECITAL OF FACTS IN THE COMPLAINT OR INFORMATION. — In *Gabriel v. Court of Appeals,* we held that the real nature of the crime charged is determined, not from the caption or preamble of the informaton nor from the specification of the law alleged to have been violated — these being conclusions of law — but by the actual recital of facts in the complaint or information. What controls is not the designation but the description of the offense charged. From a legal point of view, and in a very real sense, it is of no concern to the accused what the technical name of the crime of which he stands charged is. If the accused performed the acts alleged in the body of the information, in the manner stated, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.

2. LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT; ELEMENTS. — In the case at bar, the

prosecution established beyond reasonable doubt that petitioner had performed the acts constituting the offense defned in Art. 38, in relation to Art. 13(b) and punished by Art. 39 of the Labor Code, as alleged in the body of the Information. To prove illegal recruitment, two elements must be shown, namely: (1) the person charged with the crime must have undertaken recruitment activities, or any of the activities enumerated in Article 34 of the Labor Code, as amended; and (2) said person does not have a license or authority to do so. Art. 13(b) defines "recruitment and placement" as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract 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, is considered engaged in recruitment and placement." The trial court found these two elements had been proven in the case at bar. Petitioner has not offered any argument or proof that countervails such findings.

3. CRIMINAL LAW; CRIMINAL ACT IS PUNISHABLE UNDER THE LAW IN FORCE AT THE TIME OF ITS COMMISSION; PROHIBITION AGAINST *EX POST FACTO* LAW AND RETROACTIVE APPLICATION OF THE LAW; NOT VIOLATED IN CASE AT BAR. — The basic rule is that a criminal act is punishable under the law in force at the time of its commission. Thus, petitioner can only be charged and found guilty under the Labor Code which was in force in 1993 when the acts attributed to her were committed. Petitioner was charged in 1998 under an Information that erroneously designated the offense as covered by R.A. No. 8042, but alleged in its body acts which are punishable under the Labor Code. As it was proven that petitioner had committed the acts she was charged with, she was properly convicted under the Labor Code, and not under R.A. No. 8042. There is no violation of the prohibition against *ex post facto* law nor a retroactive application of R.A. No. 8042, as alleged by petitioner. An *ex post facto* law is one which, among others, aggravates a crime or makes it greater than it was when committed or changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed. Penal laws and laws which, while not penal in nature, nonetheless have provisions defining offenses and prescribing penalties for their violation

operate prospectively. Penal laws cannot be given retroactive effect, except when they are favorable to the accused. R.A. No. 8042 amended pertinent provisions of the Labor Code and gave a new definition of the crime of illegal recruitment and provided for its higher penalty. There is no indication in R.A. No. 8042 that said law, including the penalties provided therein, would take effect retroactively. A law can never be considered *ex post facto* as long as it operates prospectively since its strictures would cover offenses committed after and not before its enactment. Neither did the trial court nor the appellate court give R.A. No. 8042 a retroactive application since both courts passed upon petitioner's case only under the aegis of the Labor Code. The proceedings before the trial court and the appellate court did not violate the prohibition against *ex post facto* law nor involved a retroactive application of R.A. No. 8042 in any way.

APPEARANCES OF COUNSEL

Law Firm of Manriquez Orcullo & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

This is a Petition for Review[1] under Rule 45 of the Rules of Court filed by petitioner Rosario Nasi-Villar assailing the Decision[2] dated 27 June 2005 and Resolution[3] dated 28 November 2006 of the Court of Appeals. This case originated from an Information[4] for Illegal Recruitment as defined under Sections 6 and 7 of Republic Act (R.A.) No. 8042[5] filed by the Office of the Provincial

[1] *Rollo*, pp. 21-36.

[2] *Id.* at 87-108.

[3] *Id.* at 117-120.

[4] *Id.* at 37-38.

[5] Migrant Workers and Overseas Filipinos Act of 1995, which amended the overseas employment provisions of the Labor Code, gave a new definition of the crime of illegal recruitment and increased the penalty therefore.

Prosecutor of Davao del Sur on 5 October 1998 for acts committed by petitioner and one Dolores Placa in or about January 1993. The Information reads:

> That on [*sic*] or about the month of [January 1993], in the Municipality of Sta. Cruz, Province of Davao del Sur, Philippines and within the jurisdiction of the Honorable Court, the aforenamed accused, conspiring together, confederating with and mutually helping one another through fraudulent representation and deceitful machination, did then and there [willfully], unlawfully and feloniously recruit Nila Panilag for employment abroad[,] demand and receive the amount of ₱6,500.00 Philippine Currency [*sic*] as placement fee[,] the said accused being a non-licensee or non-holder of authority to engage in the recruitment of workers abroad to the damage and prejudice of the herein offended party.
>
> CONTRARY TO LAW.[6]

On 3 July 2002, after due trial, the Regional Trial Court (RTC), Br. 18, Digos City, Davao del Sur found the evidence presented by the prosecution to be more credible than that presented by the defense and thus held petitioner liable for the offense of illegal recruitment under the Labor Code, as amended.[7] The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the Court hereby finds accused ROSARIO NASI-VILLAR GUILTY BEYOND REASONABLE DOUBT of Illegal Recruitment and, in accordance with the penalty set forth under the Labor Code, as amended, said accused is hereby sentenced to an indeterminate penalty ranging from FOUR YEARS as minimum to FIVE YEARS as maximum.
>
> On the civil aspect of the case, there being no substantial proof presented to justify a grant of civil damages, this Court makes no pronouncement thereon.
>
> With respect to accused Ma. Dolores Placa, who is still at large, the records of this case are hereby sent to the archives to be retrieved in the event that said accused would be apprehended. Issue an *alias* warrant of arrest for the apprehension of said accused.

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[6] *Rollo*, p. 37.

[7] *Id.* at 39-54. Decision penned by Judge Marivic Trabajo Daray.

SO ORDERED.[8]

Petitioner appealed to the Court of Appeals raising as sole issue the alleged error by the trial court in finding her guilty of illegal recruitment on the basis of the trial court's appreciation of the evidence presented by the prosecution.

The Court of Appeals, in its Decision dated 27 June 2005,[9] following the principle that an appeal in a criminal case throws the whole case wide open for review, noted that the criminal acts alleged to have been committed happened sometime in 1993. However, R.A. No. 8042, under which petitioner was charged, was approved only on 7 June 1995 and took effect on 15 July 1995. Thus, the Court of Appeals declared that petitioner should have been charged under the Labor Code, in particular Art. 13(b) thereof, and not under R.A. No. 8042. Accordingly, it made its findings on the basis of the provisions of the Labor Code and found petitioner liable under Art. 38, in relation to Art. 13(b), and Art. 39 of the Labor Code. The appellate court affirmed with modification the decision of the RTC, decreeing in the dispositive portion, thus:

WHEREFORE, in view of all the foregoing, the appealed **Decision** of the Regional Trial Court, 11th Judicial Region, Br. 18, City of Digos, Province of Davao del Sur, finding Rosario Nasi-Villar guilty beyond reasonable doubt of the crime of Illegal Recruitment is **AFFIRMED** with **MODIFICATION** in that Rosario Nasi-Villar is **ORDERED** to pay Nila Panilag the sum of ₱10,000.00 as temperate damages.

SO ORDERED.[10]

On 28 November 2006, the appellate court denied petitioner's motion for reconsideration.[11]

Hence, petitioner filed the instant petition for review.

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[8] *Id.* at 53.

[9] *Supra* note 2.

[10] *Id.* at. 106.

[11] *Supra* note 3.

Petitioner alleges that the Court of Appeals erred in failing to consider that R.A. No. 8042 cannot be given retroactive effect and that the decision of the RTC constitutes a violation of the constitutional prohibition against *ex post facto* law. Since R.A. No. 8042 did not yet exist in January 1993 when the crime was allegedly committed, petitioner argues that law cannot be used as the basis of filing a criminal action for illegal recruitment. What was applicable in 1993 is the Labor Code, where under Art. 38, in relation to Art. 39, the violation of the Code is penalized with imprisonment of not less than four (4) years nor more than eight (8) years or a fine of not less than ₱20,000.00 and not more than ₱100,000.00 or both. On the other hand, Sec. 7(c) of R.A. No. 8042 penalizes illegal recruitment with a penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than ₱200,000.00 nor more than ₱500,000.00. Thus, the penalty of imprisonment provided in the Labor Code was raised or increased by R.A. No. 8042. Petitioner concludes that the charge and conviction of an offense carrying a penalty higher than that provided by the law at the time of its commission constitutes a violation of the prohibition against *ex post facto* law and the retroactive application of R.A. No. 8042.

In its Comment[12] dated 7 September 2007, the Office of the Solicitor General (OSG) argues that the Court of Appeals' conviction of petitioner under the Labor Code is correct. While conceding that there was an erroneous designation of the law violated by petitioner, the OSG stresses that the designation of the offense in the Information is not determinative of the nature and character of the crime charged against her but the acts alleged in the Information. The allegations in the Information clearly charge petitioner with illegal recruitment as defined in Art. 38, in relation to Art. 13(b) of the Labor Code, and penalized under Art. 39(c) of the same Code. The evidence on record substantiates the charge to a moral certainty. Thus, while there was an erroneous specification of the law violated by petitioner in the Information, the CA was correct in affirming the RTC's

[12] *Id.* at 174-192.

imposition of the penalty for simple illegal recruitment under the Labor Code, the OSG concludes.

The petition is denied. We find no reversible error in the decision arrived at by the Court of Appeals.

In *Gabriel v. Court of Appeals*,[13] we held that the real nature of the crime charged is determined, not from the caption or preamble of the information nor from the specification of the law alleged to have been violated — these being conclusions of law — but by the actual recital of facts in the complaint or information. What controls is not the designation but the description of the offense charged. From a legal point of view, and in a very real sense, it is of no concern to the accused what the technical name of the crime of which he stands charged is. If the accused performed the acts alleged in the body of the information, in the manner stated, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.[14]

In the case at bar, the prosecution established beyond reasonable doubt that petitioner had performed the acts constituting the offense defined in Art. 38, in relation to Art. 13(b) and punished by Art. 39 of the Labor Code, as alleged in the body of the Information. To prove illegal recruitment, two elements must be shown, namely: (1) the person charged with the crime must have undertaken recruitment activities, or any of the activities enumerated in Article 34 of the Labor Code, as amended; and (2) said person does not have a license or authority to do so.[15] Art. 13(b) defines "recruitment and placement" as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract 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, is considered engaged in recruitment

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[13] G.R. No. 128474, 6 October 2004, 440 SCRA 136, 150.

[14] *United States v. Lim San*, 17 Phil. 273, 279 (1910).

[15] *People v. Señoron*, 334 Phil. 932, 937-938 (1997).

and placement." The trial court found these two elements had been proven in the case at bar. Petitioner has not offered any argument or proof that countervails such findings.

The basic rule is that a criminal act is punishable under the law in force at the time of its commission. Thus, petitioner can only be charged and found guilty under the Labor Code which was in force in 1993 when the acts attributed to her were committed. Petitioner was charged in 1998 under an Information that erroneously designated the offense as covered by R.A. No. 8042, but alleged in its body acts which are punishable under the Labor Code. As it was proven that petitioner had committed the acts she was charged with, she was properly convicted under the Labor Code, and not under R.A. No. 8042.

There is no violation of the prohibition against *ex post facto* law nor a retroactive application of R.A. No. 8042, as alleged by petitioner. An *ex post facto* law is one which, among others, aggravates a crime or makes it greater than it was when committed or changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.[16] Penal laws and laws which, while not penal in nature, nonetheless have provisions defining offenses and prescribing penalties for their violation operate prospectively. Penal laws cannot be given retroactive effect, except when they are favorable to the accused.[17]

R.A. No. 8042 amended pertinent provisions of the Labor Code and gave a new definition of the crime of illegal recruitment and provided for its higher penalty. There is no indication in R.A. No. 8042 that said law, including the penalties provided therein, would take effect retroactively. A law can never be considered *ex post facto* as long as it operates prospectively since its strictures would cover only offenses committed after and not before its enactment.[18] Neither did the trial court nor

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[16] *Benedicto v. Court of Appeals*, 416 Phil. 722, 748 (2001), citing *In Re: Kay Villegas Kami Inc.*, 35 SCRA 429, 431(1970) citing *Calder v. Bull* (1798), 3 Dall. 386, *Makin v. Wolfe*, 2 Phil. 74 (1903).

[17] *Benedicto v. Court of Appeals*, 416 Phil. 722, 749 (2001).

[18] I.A. Cruz, *CONSTITUTIONAL LAW* (1993 ed.), p. 253.

the appellate court give R.A. No. 8042 a retroactive application since both courts passed upon petitioner's case only under the aegis of the Labor Code. The proceedings before the trial court and the appellate court did not violate the prohibition against *ex post facto* law nor involved a retroactive application of R.A. No. 8042 in any way.

WHEREFORE, the petition is *DENIED.* The assailed Decision dated 27 June 2005 and Resolution dated 28 November 2006 of the Court of Appeals are *AFFIRMED.*

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177354. November 14, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RICARDO TALAN *y* DOE @ CARDING,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASE OPENS ENTIRE CASE FOR REVIEW, EVEN UNASSIGNED ERRORS. — An appeal in a criminal case opens the entire case for review. The Court can correct errors unassigned in the appeal.

2. CRIMINAL LAW; RAPE; FORCIBLE ABDUCTION ABSORBED IF THE REAL OBJECTIVE IS RAPE. — The Court finds Talan guilty beyond reasonable doubt of two counts of rape. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim. Based on the records, the real objective of Talan was to rape AAA when he

brought her to the place with banana trees and to Santa Elena, Camarines Norte.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THREON, RESPECTED. — Talan claimed that the lower courts erred in relying solely on AAA's testimony. The Court is not impressed. In rape cases, the credibility of the victim's testimony is almost always the single most important factor. When the victim's testimony is credible, it may be the sole basis for the accused's conviction. The evaluation of the credibility of the witnesses' testimonies is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. The Court accords great respect to the trial court's findings, unless the trial court overlooked or misconstrued substantial facts which could have affected the outcome of the case.

4. ID.; ID.; ID.; WHERE TESTIMONY CONSISTENT WITH MEDICAL FINDINGS. — AAA's testimony is consistent with the medical findings. When the testimony of the victim is consistent with the medical findings, sufficient basis exists for the conclusion that the crime was committed.

5. CRIMINAL LAW; RAPE; INTIMIDATION; PRESENT IN CASE AT BAR. — Talan claimed that it was improbable that he forced AAA to go with him because AAA did not cry for help while he was bringing her to Santa Elena, Camarines Norte. The Court is not impressed. It is not improbable because Talan threatened AAA that if she cried for help, he would kill her. The intimidation prevented AAA from crying for help. Moreover, AAA was a minor and Talan exercised moral ascendancy over her, being her uncle.

6. REMEDIAL LAW; EVIDENCE; DENIAL; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE IDENTIFICATION. — Talan claimed that denial is a valid defense. The Court is not impressed. Denial as a defense is inherently weak and deserves scant consideration. It cannot prevail over the victim's positive identification of the accused.

7. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; RELATIONSHIP; MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION; CASE AT BAR. — The qualifying circumstance of relationship must be specifically alleged in the information — the information must clearly state that "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." In *People v. Ibarrientos*, the Court held that: The allegation in the information x x x that the appellant is an uncle of the victim is not specific enough to satisfy the special qualifying circumstance of relationship. We have previously ruled, and now we reiterate, that it is necessary to spell out in the Information for rape that the accused is a "relative within the third degree of consanguinity or affinity" as stated in Article 266-B. Without such averment, the Information x x x falls short of the statutory requirement for the imposition of capital punishment on the offender. Factual allegations in the information do not need to be referred to as "qualifying circumstances," in order to appreciate them as such and raise the penalty. However, these factual allegations must be specified completely, in order to fully inform the accused of the circumstances which warrant the imposition of a higher offense. Otherwise, such circumstances cannot be appreciated to qualify the offense. In the present case, the information in Criminal Case No. L-3373 merely states that Talan abducted and raped his "niece" without specifying that Talan is a relative of the victim within the third degree of consanguinity. In any event, the penalty for simple rape is still *reclusion perpetua*.

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 30 November 2006 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 00410 affirming

[*] Per Special Order No. 534.

[1] *Rollo*, pp. 2-27. Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Bienvenido L. Reyes and Fernanda Lampas-Peralta, concurring.

the 4 November 2004 Joint Judgment[2] of the Regional Trial Court (RTC), Judicial Region V, Branch 57, Libmanan, Camarines Sur, in Criminal Case Nos. L-3373 and L-3599. The trial court found Ricardo Talan *y* Doe *alias* Carding (Talan) guilty beyond reasonable doubt of two counts of forcible abduction with rape.

The Facts

AAA was born on 15 July 1984. She resided in Poblacion Zone 2, Del Gallego, Camarines Sur. She is the niece of Talan.

On 16 May 2000, Talan asked AAA if she wanted to study at the University of the Philippines, Diliman for free. AAA said yes. Talan told AAA that he knew three women who were offering a scholarship and whom they should meet in Barangay Pinagdapian, Del Gallego, Camarines Sur.

On 17 May 2000, at around 8 a.m., AAA and Talan went to Barangay Pinagdapian. When they arrived at the supposed meeting place, the three women were not there. AAA and Talan went to a hut owned by Talan, then went to a place with banana trees. There, Talan raped AAA: (1) he told her to undress; (2) he threatened to kill her, her parents and her siblings; (3) he pushed her to the ground; (4) he told her that they will do three positions; (5) he kissed her lips; (6) he sucked her breasts; (7) he licked her vagina; (8) he inserted his penis in her vagina; and (9) he told her not to tell anyone about what happened. After raping AAA for around 15 minutes, Talan rested for around five minutes. Talan then raped AAA again for around 10 minutes. Because of fear, AAA did not tell anyone about the incident.

On 30 May 2000, at around 8 p.m., AAA was on her way home from a friend's house. Talan (1) approached AAA; (2) forced AAA to go with him; (3) told AAA that the supposed persons who wanted to kill her were at her house; (4) dragged AAA towards the highway where a tricycle was waiting; (5) brought AAA to Tagkawayan, Quezon, using the tricycle; (6) forced AAA to board a bus going to Santa Elena, Camarines Norte; and (7) brought AAA to a hut in the middle of rice fields in

[2] CA *rollo*, pp. 12-26. Penned by Judge Irma Isidora M. Boncodin.

Barangay San Lorenzo. A certain Graciano Romano (Romano) owned the hut. AAA and Talan spent the night in the hut.

On 1 June 2000, Talan (1) poked a knife on AAA's neck; (2) threatened to kill AAA; (3) undressed AAA; (4) mounted AAA; and (5) inserted his penis in AAA's vagina.

On 2 June 2000, AAA's uncles and Talan's brothers, Marcus and Rodolfo Talan (Marcus and Rodolfo), went to Santa Elena, Camarines Norte, to look for AAA. Romano informed Marcus and Rodolfo that AAA and Talan were there. Marcus and Rodolfo sought the help of the members of the *barangay tanod*. Two members of the *barangay tanod* searched for AAA and Talan. When the *barangay tanod* members saw AAA and Talan, they handcuffed Talan and brought him to the police station.

On 5 June 2000, Dr. Ma. Rizalina B. Adalid (Dr. Adalid) examined AAA. Dr. Adalid found "incomplete healed, hymenal laceration at 9 o'clock position."

In an Information dated 13 August 2001, Talan was charged with forcible abduction with rape. The case was docketed as Criminal Case No. L-3373. The Information stated:

> That on or about 8:00 o'clock p.m. of May 30, 2000, at Barangay Poblacion, Zone 2, Del Gallego, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, willfully, unlawfully and feloniously, abduct [AAA], his fifteen (15) year old niece, against her will and without her consent by forcibly taking her to San Lorenzo Ruiz, Sta. Elena, Camarines Norte, and thereat on June 1, 2000 at around 10:00 o'clock in the evening, with force, violence and intimidation and while armed with a knife succeeded in having sexual intercourse with aforesaid victim against her will and without her consent to her damage and prejudice.[3]

In another Information dated 16 July 2002, Talan was charged with forcible abduction with rape. The case was docketed as Criminal Case No. L-3599. The Information stated:

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

That on or before 8:30 o'clock in the morning of May 17, 2000 at Zone 2, Bgy. Poblacion, Del Gallego, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court and the above-named accused, by means of deceit, did then and there, willfully, unlawfully and feloniously take the victim, [AAA], 15 yrs. old, to Bgy. Pinagdapian, Del Gallego, Camarines Sur, under the [pretext] that students from the University of the Philippines are waiting for them to talk to her about the possibility of sending her to school for free, but once there, through force, threat and intimidation and fraudulent machination, had carnal knowledge with the victim against her will for three (3) times, allowing the victim to leave for home after 10:30 o'clock in the morning but only after warning her not to tell anyone or else he will kill her, to her damage and prejudice.[4]

Talan pleaded not guilty to both charges. According to him, (1) he was cutting and gathering bamboos with his nephew in Barangay Pinagdapian on 17 May 2000; (2) he brought AAA to Santa Elena, Camarines Norte, to protect her from the persons who wanted to kill her; and (3) his siblings filed the present case against him because they were interested in his lands.

The RTC's Ruling

In its 4 November 2004 Joint Judgment, the trial court found Talan guilty beyond reasonable doubt of two counts of forcible abduction with rape:

WHEREFORE, the prosecution having duly proved the guilt of the accused in these two cases for forcible abduction with rape, this court finds accused **RICARDO TALAN *y* DOE *Alias* "Carding" GUILTY** of the crimes as charged and hereby imposes against said accused the supreme penalty of **DEATH** in Criminal Case No. L-3373 and the penalty of ***RECLUSION PERPETUA*** in Criminal Case No. L-3599 and in line with recent jurisprudence where the death penalty is imposed he is hereby ordered to indemnify the victim [AAA], the amount of Seventy[-]Five Thousand Pesos (₱75,000.00) as civil indemnity in Criminal Case No. L-3373 and Fifty Thousand Pesos (₱50,000.00), as civil indemnity in Criminal Case No. L-3599 and the further sum of One Hundred Thousand Pesos (₱100,000.00) as moral damages in these two cases.[5]

[4] *Id.* at 13.

[5] *Id.* at 27.

On appeal, Talan claimed that the trial court erred in finding him guilty beyond reasonable doubt of two counts of forcible abduction with rape: (1) the trial court relied solely on AAA's testimony as the basis for its judgment; (2) that AAA did not cry for help while Talan was bringing her to Santa Elena, Camarines Norte, was improbable; and (3) denial was a valid defense. Talan also claimed that, assuming that he was indeed guilty of the charges, the trial court erred in considering the qualifying circumstance of relationship in Criminal Case No. L-3373.

The Court of Appeals' Ruling

In its 30 November 2006 Decision, the Court of Appeals affirmed the trial court's Joint Judgment with modification:

> WHEREFORE, premises considered, herein appeal is hereby **DISMISSED**. The assailed Decision is hereby **AFFIRMED** with **MODIFICATION**, the penalty of Death imposed by the court *a quo* in Criminal Case No. L-3373, is reduced to ***Reclusion Perpetua***. Likewise, the civil indemnity to be awarded to the Victim in Criminal Case No. L-3373 is hereby reduced to **Fifty Thousand (Php 50,000.00) Pesos**.[6]

Hence, this appeal.

The Court's Ruling

An appeal in a criminal case opens the entire case for review. The Court can correct errors unassigned in the appeal.[7]

The Court finds Talan guilty beyond reasonable doubt of two counts of rape. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim.[8] Based on the records, the real objective of Talan was to rape AAA when he brought her to the place with banana trees and to Santa Elena, Camarines Norte.

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

[7] *People v. Montinola*, G.R. No. 178061, 31 January 2008, 543 SCRA 412.

[8] *Garces v. People*, G.R. No. 173858, 17 July 2007, 527 SCRA 827; *People v. Muros*, 467 Phil. 474 (2004).

Talan claimed that the lower courts erred in relying solely on AAA's testimony. The Court is not impressed. In rape cases, the credibility of the victim's testimony is almost always the single most important factor. When the victim's testimony is credible, it may be the sole basis for the accused's conviction.[9]

The evaluation of the credibility of the witnesses' testimonies is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. The Court accords great respect to the trial court's findings, unless the trial court overlooked or misconstrued substantial facts which could have affected the outcome of the case.[10]

In the present case, the trial court found AAA's testimony credible. The trial court held that, "Evaluating the evidence presented both by the prosecution and the defense, this court gives more credence to the testimony of the prosecution witnesses as against the alibi and denial posited by the accused." The trial court added that, "This court x x x noted that when [AAA] was describing how accused raped her she cried for at least two times."

Indeed, the Court finds AAA's testimony convincing:

Q: How did you know that your uncle were [sic] forcibly removing your T-shirt?
A: I was awaken [sic] and I looked at him.

Q: Now, when you looked at him and when you said he was forcibly removing your T-shirt, what did you do?
A: I was crying.

Q: Why were you crying?
A: Because he poked a knife on my neck.

x x x x x x x x x

Q: Now, after this accused able [sic] to remove your T-shirt, what did the accused do next, if any?
A: He was forcibly removing my short [sic] and underwear.

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[9] *People v. Abulon*, G.R. No. 174473, 17 August 2007, 530 SCRA 675.

[10] *People v. Fernandez*, G.R. No. 176060, 5 October 2007, 535 SCRA 159.

Q: And while he was according to you forcibly removing your short [sic] and underwear, what were you doing also?
A: I was crying.

x x x x x x x x x

Q: After he removed your short [sic] and panty, what did the accused do next?
A: He also removed his underwear.

x x x x x x x x x

Q: After he was removing [sic] his underwear and you said he was already naked, what did the accused do next?
A: He forcibly opened my two (2) legs.

x x x x x x x x x

Q: And what was your position as well as the accused when he forcibly opening [sic] your legs?
A: I was lying on my back.

Q: What about him, what was his position to you [sic]?
A: He was on top of me.

Q: Now, after he opened your legs and according to you he forcibly opened your legs, what did the accused do next, if any?
A: He was trying to insert his penis into my vagina.

INTERPRETER: Witness is demonstrating by making push and pull movements.

x x x x x x x x x

Q: And what did you feel if any when he inserted his penis into your vagina?
A: I felt pain.

Q: What were you doing while he was inserting his penis and making push and pull movements on top of you?
A: I was crying.

Q: Why were you crying?
A: I am afraid, sir.[11]

x x x x x x x x x

[11] TSN, 12 February 2002, pp. 15-20.

Q: What did you feel when you were being told to undress yourself?
A: He told me if I will not undress he will kill me including my parents and my siblings.

Q: Did you undress after you were threatened that way?
A: Yes, sir, because of great fear.

Q: What happened after you undressed yourself?
A: He made me lie on the ground, sir.

x x x x x x x x x

Q: When you were made to lie down, what happened next?
A: He told me that there will be three (3) positions to be made.

x x x x x x x x x

Q: What happened after that?
A: He kissed my lips and my breast, sir.

Q: What else happened?
A: He also kissed my vagina.

Q: So after that what happened next?
A: He keeps [sic] on touching my private parts and he repeatedly kissed my private parts and when he kissed my lips he inserted his penis into my vagina.

Q: What did you feel when he inserted his penis into your vagina?
A: Painful.

Q: After fifteen (15) minutes, what happened next?
A: He told me that we will be changed [sic] position, the side position, sir, but I did not agree with him, so, he chose to do the previous position.

Q: You said that he was on top of you for about fifteen (15) minutes, after fifteen (15) minutes what did he do?
A: He rested for a while.

Q: For how long?
A: About five (5) minutes.

Q: And after that, that was the time when he told you that he wanted to do the side position?
A: Yes, sir.

Q: So what did he do on the second time?
A: Same with the previous position, sir.

Q: And how long was he on top of you?
A: Also 10 to 15 minutes, sir.

Q: After that what did he do?
A: He told me that it is already finished and he told me that I should not be fear [sic] what had happened to us and he keeps [sic] on threatening me that he will kill me.

Q: How many times were you raped on May 17?
A: For two (2) times.[12]

Moreover, AAA's testimony is consistent with the medical findings. When the testimony of the victim is consistent with the medical findings, sufficient basis exists for the conclusion that the crime was committed.[13] In the medical certificate she prepared, Dr. Adalid found "incomplete healed, hymenal laceration at 9 o'clock position." During the trial, Dr. Adalid testified:

Q: Now, in this Exhibit A there are findings, will you please read the findings and explain to us in layman's language the meaning of this medical findings?
A: I have here my medical findings for the patient, Positive incomplete healed, hymenal laceration at 9 o'clock position. "Incomplete healed hymenal laceration" this means that the incident might have occurred four (4) to ten (10) days before I examined the patient. And the "hymenal laceration at 9o'clock position" this is compared to a clock, the laceration was found at the 9 o'clock position.

Q: What could have been the cause of this particular finding on [AAA]?
A: The possible cause of this particular laceration could have been a solid or hard object was inserted to the vagina of the victim.

Q: For instance, an erected [sic] penis inserted on [sic] the vagina during sexual intercourse could cause this laceration?
A: Yes, that might cause the laceration.[14]

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[12] TSN, 17 November 2003, pp. 8-10.

[13] *People v. Muros*, *supra* note 8.

[14] TSN, 21 January 2002, pp. 5-6.

Talan claimed that it was improbable that he forced AAA to go with him because AAA did not cry for help while he was bringing her to Santa Elena, Camarines Norte. The Court is not impressed. It is not improbable because Talan threatened AAA that if she cried for help, he would kill her. The intimidation prevented AAA from crying for help.[15] Moreover, AAA was a minor and Talan exercised moral ascendancy over her, being her uncle. During the trial, AAA testified:

Q: Did it not occur to [sic] your mind to shout when he dragged you by the arm?
A: No, sir.

Q: Tell us why?
A: Because he often threatened me not to shout because the persons who wants [sic] to kill me were in our house.

x x x x x x x x x

Q: And did it not occur to [sic] your mind to tell the tricycle driver about what happened to you?
A: No, sir, because he keeps on looking at me as if he is telling me not to tell anybody of what happened to us.

x x x x x x x x x

Q: Why did you board that bus going to Tabogon together with the accused?
A: In order that the persons who wants [sic] to kill me will not be able to track us.[16]

x x x x x x x x x

Q: While you were being dragged to the other side of the highway did you not plead to the accused not to drag you?
A: I pleaded to the accused and he said that he should bring me back to our house.

Q: On [sic] top of your voice when you pleaded to him to bring you back to your house?
A: Yes, sir.

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[15] *People v. Muros, supra* note 8.

[16] TSN, 12 February 2002, pp. 10-13.

Q: But no one helped you, is that correct?
A: Yes, because there were no people around.

x x x x x x x x x

Q: Did you not tell the trimobile driver that you were being forced by the accused in going to Tagkawayan, Quezon?
A: Yes, sir.

Q: While on board the trimobile did you not talk to each other?
A: While on board the trimobile, he told me that I should not talk, particularly that I should not report to the trimobile driver, because if I should do so he will kill me.[17]

x x x x x x x x x

Q: Did you not talk to the passengers in the bus while you were inside the bus?
A: No, because we have no seatmates.

Q: Did you not approach any passengers and tell them about your problem with respect to this alleged incident?
A: No, because at that time the accused does [sic] not want me to talk to anybody inside the bus, because if I should talk to them he will be the one to kill me.[18]

Talan claimed that denial is a valid defense. The Court is not impressed. Denial as a defense is inherently weak and deserves scant consideration. It cannot prevail over the victim's positive identification of the accused.[19] During the trial, AAA positively identified Talan:

Q: Now, tell us, do you know a certain Ricardo Talan *alias* "Carding?"
A: He is my uncle.

Q: Why he became [sic] your uncle?
A: He is the brother of my mother.

Q: And how do you call this Ricardo Talan?
A: *Tiyo*.

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[17] TSN, 3 June 2002, pp. 10-11.

[18] TSN, 6 June 2002, p. 3.

[19] *People v. Bon*, G.R. No. 166401, 30 October 2006, 506 SCRA 168.

Q: *Tiyo* what?
A: *Tiyo* Carding.

Q: Tell us, is he the same Ricardo Talan *alias* "Carding," the accused in this case?
A: Yes, sir.

Q: Will you please tell us if the accused is in court?
A: Yes, sir.

Q: Will you please point to him.

INTERPRETER: Witness is pointing to a man seated inside the courtroom and when he was asked to identify his name responded [sic] by the name of Ricardo Talan.

Q: Do you know that you are charging your uncle a very serious offense?
A: Yes, sir.

Q: Now, if your uncle will be convicted he could be sentenced for life imprisonment or death?
A: Yes, sir.[20]

Talan claimed that the qualifying circumstance of relationship should not be considered in Criminal Case No. L-3373. The Court agrees. The qualifying circumstance of relationship must be specifically alleged in the information — the information must clearly state that "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."[21] In *People v. Ibarrientos*,[22] the Court held that:

The allegation in the information x x x that the appellant is an uncle of the victim is not specific enough to satisfy the special qualifying circumstance of relationship. We have previously ruled, and now we reiterate, that it is necessary to spell out in the Information for

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[20] TSN, 12 February 2002, pp. 5-6.

[21] REVISED PENAL CODE, Art. 266-B.

[22] G.R. Nos. 148063-64, 17 June 2004, 432 SCRA 424.

rape that the accused is a "relative within the third degree of consanguinity or affinity" as stated in Article 266-B. Without such averment, the Information x x x falls short of the statutory requirement for the imposition of capital punishment on the offender. Factual allegations in the information do not need to be referred to as "qualifying circumstances," in order to appreciate them as such and raise the penalty. However, these factual allegations must be specified completely, in order to fully inform the accused of the circumstances which warrant the imposition of a higher offense. Otherwise, such circumstances cannot be appreciated to qualify the offense.

In the present case, the information in Criminal Case No. L-3373 merely states that Talan abducted and raped his "niece" without specifying that Talan is a relative of the victim within the third degree of consanguinity. In any event, the penalty for simple rape is still *reclusion perpetua*.[23]

WHEREFORE, the Court *AFFIRMS* the 30 November 2006 Decision of the Court of Appeals in CA-G.R. CR HC No. 00410 with the *MODIFICATION* that appellant is guilty beyond reasonable doubt of two counts of simple rape.

SO ORDERED.

Austria-Martinez,[**] *Corona, Carpio Morales,*[***] and *Leonardo-de Castro, JJ.,* concur.

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[23] See note 21.

[**] Designated member per Special Order No. 535.

[***] Designated member per Special Order No. 535.

SECOND DIVISION

[G.R. No. 177414. November 14, 2008]

NOEL E. MORA, *petitioner, vs.* **AVESCO MARKETING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE COURT OF APPEALS; PROPER REMEDY TO ASSAIL DECISIONS OF THE VOLUNTARY ARBITRATOR. — The Court notes that the appellate court erred in giving due course to petitioner's petition for *certiorari*, for his proper mode of appeal was for review under Rule 43 of the 1997 Rules of Civil Procedure. Respondent had pointed this out in its Comment before the appellate court. The appellate court, however, misappreciated this Court's ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees* which, together with Circular 1-95, was subsequently used as basis of the Rules of Court Revision Committee for the inclusion of the decisions of the Voluntary Arbitrator (VA) as appealable to the Court of Appeals under Rule 43. Section 1 of Rule 43 reading: SECTION 1. *Scope.* This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securites and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and **voluntary arbitrators** authorized by law *vis-à-vis* Section 4 thereof requires that the petition for review to be taken to the Court of Appeals should be filed

within fifteen (15) days from notice of the award, judgment or final order or resolution of the VA. While Sec. 2 of the same Rule 43 provides that said Rule shall not apply to judgments or final orders issued under the Labor Code, the same refers only to cases decided by labor arbiters which are appealable to the National Labor Relations Commission.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER. — An independent action for *certiorari* may be availed of when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law, if the decision of the voluntary arbitrator involves a question of jurisdiction. What petitioner is contesting, however, is the finding that he voluntarily resigned. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; VOLUNTARY RESIGNATION; MUST BE SUFFICIENTLY ESTABLISHED; CASE AT BAR. — In *Mobile Protective & Detective Agency v. Ompad*, the Court held that should an employer interpose the defense of resignation, as in the present case, it is still incumbent upon the employer, respondent herein, to prove that the employee *voluntarily* resigned. Voluntary resignations being unconditional in nature, both the intent and the overt act of relinquishment should concur. If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation yet the employee specifically denies such evidence, as in petitioner's case, the employer is burdened to prove the due execution and genuineness of such evidence. Respondent in this case failed to discharge such burden. The notice of disciplinary action-"show cause" letter indefinitely suspending petitioner, even after petitioner had submitted on March 25, 2003 his letter of resignation, albeit alleged to have withdrawn on even date, negates respondent's assertion of voluntary separation. If respondent considered petitioner resigned on account of his March 25, 2003 letter, to be effective on April 25, 2003, there would have been no more need to preventively suspend him effective March 26, 2003 "until further notice pending investigation" of his alleged transgressions. For a resignation tendered by an employee to take effect, it should first be accepted or approved by the employer.

Petitioner's receipt by respondent's personnel department of his resignation letter is not equivalent to approval. Since petitioner requested that his resignation was to be effective a month later or on April 25, 2003, respondent's approval was *a fortiori* necessary.

4. ID.; ID.; ILLEGAL DISMISSAL; CASE AT BAR. — The issue of whether petitioner was illegally dismissed, the Court finds in the affirmative. While selling of respondent's competitors' products is a valid ground for termination of employment, an employer cannot just hurl generalized accusations but should at least cite specific instances and proof in support thereof. Respondent relied on a "report by [petitioner's] superiors" in faulting petitioner. What this alleged "report" was and what it contained, no testimonial or documentary proof thereof was proffered. And while respondent gave the impression that it conducted or was going to conduct an investigation on the basis of the "report," there is no showing that one such was conducted and, if there was, what the result was. The tenor of respondent's "show cause" letter sent to petitioner — it was "constrained to dismiss" petitioner — shows that it was terminating his services, the incongruent directive for him to explain notwithstanding. While the appellate court's *ratio* that "preventive suspension is a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee," is well-taken, it overlooked that the preventive suspension of petitioner effective on March 26, 2003 "until further notice" lapsed into dismissal six days later without petitioner substantiating the basis therefor. Petitioner's questioned filing of the illegal dismissal case three months and 20 days after he withdrew his letter of resignation does not dent his case. Under the law, he has four years to file his complaint.

5. ID.; ID.; ID.; MORAL DAMAGES AND ATTORNEY'S FEES, DENIED IN THE ABSENCE OF EVIDENCE THEREFOR. — Petitioner's dismissal was illegal. His claim for damages and attorney's fees must, however, be denied in light of his failure to prove the bases therefor. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries

unjustly caused. Broad allegations, bereft of proof, cannot sustain the award of moral damages, as well as attorney's fees.

APPEARANCES OF COUNSEL

Aguirre Aportadera Gavero Sandico & Associates for petitioner.
Gerald C. Jacob for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On petition for review on *certiorari* is the February 28, 2007 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86993 affirming the ruling of Voluntary Arbitrator (VA) Nicolas Barriatos that Noel Mora (petitioner) was not illegally dismissed as he voluntarily resigned.

In March 1996, petitioner was hired as a "sales engineer" at Avesco Marketing Corporation (respondent) to supervise and install sound and communications systems for its clientele.[2] On March 25, 2003, he tendered his letter of resignation to be effective a month after or on April 25, 2003. The letter reads *verbatim* as follows:

FOR	:	EDWIN L. TANG Vice – President Mktg.
CC	:	FRANTOR B. FERNANDEZ Personnel Manager BENNIE B. GUIAMOY PMK- Manager
DATE	:	MARCH 25, 2003

Dear Sir:

It is with **much reluctance and regret that I must ask to be released from my position** of Sales Engineer at Avesco Marketing. For the

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[1] Penned by Justice Myrna Dimaranan-Vidal with Justices Jose L. Sabio Jr. and Jose C. Reyes Jr., concurring, *rollo,* pp. 37-49.

[2] *Rollo,* p. 15.

past seven years, I cannot forget how much this company has meant to me.

With this regard, I'm tendering my resignation **effective on April 25, 2003**. Please extend to Mr. Jimmy Tang my appreciation of his kindness during the time I served.[3] (Emphasis and underscoring supplied)

It appears that petitioner's filing of a resignation letter came about after he was confronted for "selling competitors' products" to the prejudice and detriment of respondent and was given the option of either immediately resigning or face administrative charges.[4]

It further appears that petitioner changed his mind and withdrew his letter of resignation on the same day, March 25, 2003, after respondent denied his request to have his resignation made effective a month after or on April 25, 2003. Petitioner was later to claim that he inadvertently left a copy of the letter at respondent's office.[5]

The following day or on March 26, 2003, respondent's personnel manager issued to petitioner a notice of disciplinary action reading:

A report by your Superiors has reached our office just recently some days ago [*sic*] that you again have committed another breach of trust [*sic*] against our Company in violation of our [*sic*] Company Rules and Regulations. This time instead of attending to the products you have to sell, **you have surreptitiously undertaken sales transaction** [*sic*], which is patently inimical to the interest of the Company that results to sales loss for the company. x x x.

As you know very well, earlier[,] you have been disciplined for breach of trust against the Company . . . where you served a penalty of six days suspension . . . with a stern warning that commission of similar offense will eventually lead to your dismissal from the service of the company. The report that reached us now is a repetition of similar breach of trust reported upon you as Jr. Sales Engineer and for this,

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[3] CA *rollo*, p. 63; Annex "A".

[4] *Rollo*, p.16.

[5] *Id.* at p.17.

Management is constrained to dismiss you from the service for loss of trust and confident [sic] in gross violation of our Company Rules & Regulations on Dishonesty and Fraud.

On account of the foregoing, you are hereby directed to submit to the undersigned not later than 48 hours upon receipt of this memo **why dismissal penalty should not be effected against you for the cited violation**. Should you fail to comply with our requirement, the company may have no other recourse except to initiate dismissal proceedings. Meantime, **you are placed under preventive suspension effective today, March 26, 2003 until further notice pending investigation of your case**.[6] (Emphasis and underscoring supplied)

In his March 27, 2003 Response to the above-quoted notice, petitioner gave his side as follows, quoted *verbatim*:

In response to your memo with reference no. PD-C003-095 dated March 26, 2003 regarding to [*sic*] the preventive suspension you serve to me [*sic*], I am not culpable.

The report of my superior that I am surreptitiously selling other products instead of our products is **just speculation** and his mere tactics [*sic*] for our unfavorable sales output for the month. I sell products only from Avesco and never transact/deal other products. I know the consequences of that move and never cross to my mind doing that kind of accusation [*sic*].

I have been accused for a thing [*sic*] **that I did not know what particular transactions** [*sic*], I was not being talked by my superior [*sic*] about this or even asked me [sic], this is just a one[-]sided accusation and I am willing to know what it is all about. Your office did not explain to me what this accusation is all about[,] **instead offering me an immediate resignation and your notice is a step for my termination** [*sic*].

x x x[7] (Emphasis and underscoring supplied)

Petitioner had not heard from respondent thereafter. He was later to learn from third party sources that his employment had been terminated as of April 1, 2003.

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[6] CA *rollo*, p. 54.

[7] *Id.* at p. 55.

Petitioner thereupon filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC) which the labor arbiter[8] dismissed for lack of jurisdiction[9] since the dispute falls within the province of the grievance procedure provided for by the Collective Bargaining Agreement between respondent and the workers' union.

The case was thus referred to the National Conciliation and Mediation Board for voluntary arbitration. Voluntary Arbitrator (VA) Barriatos, by Decision of August 23, 2004, dismissed petitioner's complaint upon the ground that he had voluntarily resigned.[10] Petitioner received a copy of the decision on August 31, 2004.[11] Forty nine days later or on October 19, 2004, he filed a petition for *certiorari*[12] before the Court of Appeals which denied the same, it similarly finding him to have voluntarily resigned from his job.

His motion for reconsideration having been denied,[13] petitioner filed the present petition for review.

Petitioner argues that he was only inveigled to file a resignation letter on March 25, 2003 after he was asked by respondent's vice president to immediately resign and that respondent's subsequent show cause order *cum* preventive suspension clearly proves that he did not resign.

Respondent at once raises procedural infirmities in the petition, foremost of which is its attribution of grave abuse of discretion on the part of the appellate court, instead of raising errors of law, apart from a lack of verified statement of material dates.[14]

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[8] Labor Arbiter Fe Superiaso-Cellan.

[9] CA *rollo*, pp. 79-82.

[10] *Id.* at pp. 21-29.

[11] *Id.* at p. 3.

[12] *Id.* pp. 2-20.

[13] *Rollo*, p. 49.

[14] *Id.* at 69-73.

On the merits, respondent maintains that petitioner resigned.[15]

The Court notes that the appellate court erred in giving due course to petitioner's petition for *certiorari*, for his proper mode of appeal was for review under Rule 43 of the 1997 Rules of Civil Procedure. Respondent had pointed this out in its Comment[16] before the appellate court. The appellate court, however, misappreciated this Court's ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees* [17] which, together with Circular 1-95,[18] was subsequently used as basis of the Rules of Court Revision Committee for the inclusion of the decisions of the VA as appealable to the Court of Appeals under Rule 43.[19]

Section 1 of Rule 43 reading:

SECTION 1. *Scope*. This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals* and from

[15] *Id.* at 74-81.

[16] CA *rollo*, pp. 141-154.

[17] G.R. No. 120319, October 6, 1995, 249 SCRA 162.

[18] Issued May 16, 1995.

[19] Vide: *Centro Escolar University Faculty and Allied Workers-Independent Union v. Court of Appeals*, G.R. No. 165486, May 31, 2006, 490 SCRA 61, 69-70. In this case, the Court related the development of Rule 43, as regards the proper appeal of decisions of voluntary arbitrators. It observed that the Labor Code was silent as regards the appeals from the decisions of the voluntary arbitrator, unlike those of the Labor Arbiter which may be appealed to the National Labor Relations Commission. The Court noted, however, that the voluntary arbitrator is a government instrumentality within the contemplation of Section 9 of Batas Pambansa Blg. 129 which provides for the appellate jurisdiction of the Court of Appeals. The decisions of the voluntary arbitrator are akin to those of the Regional Trial Court, and, therefore, should first be appealed to the Court of Appeals before being elevated to the Court. This is in furtherance and consistent with the original purpose of Circular No. 1-91 to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial agencies not expressly excepted from the coverage of Section 9 of BP 129. Circular No. 1-91 was later revised and became Revised Administrative Circular No. 1-95. The Rules of Court Revision Committee incorporated said circular in Rule 43 of the 1997 Rules of Civil Procedure. The inclusion of the decisions of the voluntary arbitrator in the Rule was based on the Court's pronouncements in *Luzon Development Bank.*

* As amended.

awards, judgments final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, [**] Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and **voluntary arbitrators** authorized by law (emphasis and underscoring supplied)

vis-á-vis Section 4[20] thereof requires that the petition for review to be taken to the Court of Appeals should be filed within fifteen (15) days from notice of the award, judgment or final order or resolution of the VA.

While Sec. 2[21] of the same Rule 43 provides that said Rule shall not apply to judgments or final orders issued under the Labor Code, the same refers only to cases decided by labor arbiters which are appealable to the National Labor Relations Commission.

[**] As amended.

[20] Section 4, Rule 43: *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 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. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[21] Section 2 of Rule 43: *Cases not covered.* — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

As earlier noted, petitioner filed before the appellate court a petition for *certiorari* on October 19, 2004 or 49 days after receipt of the decision of the VA at which time the 15-day period to file appeal had expired.

An independent action for *certiorari* may of course be availed of when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law,[22] if the decision of the voluntary arbitrator involves a question of jurisdiction. What petitioner is contesting, however, is the finding that he voluntarily resigned. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal.[23] The appellate court should thus have dismissed outright the petition for *certiorari*, as the decision of the VA had already become final and executory.

The Court, however, resolves to set aside procedural infirmity and rule on the merits of the present petition in the interest of substantial justice to arrive at the proper conclusion that is conformable to the evidentiary facts.[24]

In *Mobile Protective & Detective Agency v. Ompad*,[25] the Court held that should an employer interpose the defense of resignation, as in the present case, it is still incumbent upon the employer, respondent herein, to prove that the employee *voluntarily* resigned.

Voluntary resignations being unconditional in nature, both the intent and the overt act of relinquishment should concur. If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation yet the employee

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[22] Section 1, Rule 65, 1997 RULES OF CIVIL PROCEDURE.

[23] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123.

[24] *Progressive Development Corporation v. NLRC*, G.R. No. 138820, October 30, 2000, 344 SCRA 512; *Samson v. NLRC*, G.R. No. 121035, April 12, 2000, 330 SCRA 460; *PAL v. NLRC*, G.R. No. 126805, March 16, 2000, 328 SCRA 273 (2000); *Aklan Electric Cooperative, Inc. v. NLRC*, G.R. No. 121439, January 25, 2000, 323 SCRA 258.

[25] G.R. No. 159195, May 9, 2005, 458 SCRA 308, 323.

specifically denies such evidence, as in petitioner's case, the employer is burdened to prove the due execution and genuineness of such evidence.[26]

Respondent in this case failed to discharge such burden. The notice of disciplinary action — "show cause" letter indefinitely suspending petitioner, even after petitioner had submitted on March 25, 2003 his letter of resignation, albeit alleged to have withdrawn on even date, negates respondent's assertion of voluntary separation. If respondent considered petitioner resigned on account of his March 25, 2003 letter, to be effective on April 25, 2003, there would have been no more need to preventively suspend him effective March 26, 2003 "until further notice pending investigation" of his alleged transgressions.

It is significant to note that in his response to the March 26, 2003 "show cause" letter of respondent, petitioner denied being "culpable" and sought to know what were those "particular transactions"-bases of breach of trust. He had not had the courtesy of any reply from respondents, however. His preventive suspension effective March 26, 2003 lapsed into termination six days later or on April 1, 2003, which he was to learn from third parties.

For a resignation tendered by an employee to take effect, it should first be accepted or approved by the employer.[27] Petitioner's receipt by respondent's personnel department of his resignation letter is not equivalent to approval. Since petitioner requested that his resignation was to be effective a month later or on April 25, 2003, respondent's approval was *a fortiori* necessary.

That respondent issued the "show cause" letter a day after petitioner filed the controversial letter of resignation could only mean that it did not accept the same.

Petitioner's "resignation" being premised on a qualification — that it be effective April 25, 2003 — was conditional in

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[26] *Ibid*.

[27] *Rase v. NLRC*, G.R. No. 110637, October 7, 1994, 237 SCRA 523, 536.

character. It is thus only considered as a mere offer. Since respondent did not accept the condition attendant to the offer as, it bears repeating, he was in fact given a "show cause" letter a day after, there was no resignation to speak of.

This brings the Court to the issue of whether petitioner was illegally dismissed. The Court finds in the affirmative.

While selling of respondent's competitors' products is a valid ground for termination of employment, an employer cannot just hurl generalized accusations but should at least cite specific instances and proof in support thereof. Respondent relied on a "report by [petitioner's] superiors" in faulting petitioner. What this alleged "report" was and what it contained, no testimonial or documentary proof thereof was proffered. And while respondent gave the impression that it conducted or was going to conduct an investigation on the basis of the "report," there is no showing that one such was conducted and, if there was, what the result was.

The tenor of respondent's "show cause" letter sent to petitioner — it was "constrained to dismiss" petitioner — shows that it was terminating his services, the incongruent directive for him to explain notwithstanding.

While the appellate court's *ratio* that "preventive suspension is a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee,"[28] is well-taken, it overlooked that the preventive suspension of petitioner effective on March 26, 2003 "until further notice" lapsed into dismissal six days later without petitioner substantiating the basis therefor.

Petitioner's questioned filing of the illegal dismissal case three months and 20 days after he withdrew his letter of resignation does not dent his case. Under the law,[29] he has four years to file his complaint.

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[28] *Rollo*, p. 46.

[29] Article 1146 of the Civil Code states: The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff; (2) Upon a quasi-delict.

In fine, petitioner's dismissal was illegal. His claim for damages and attorney's fees must, however, be denied in light of his failure to prove the bases therefor. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.[30] Broad allegations, bereft of proof, cannot sustain the award of moral damages, as well as attorney's fees.

WHEREFORE, the assailed Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Respondent is ordered to reinstate petitioner with full backwages without loss of seniority rights and privileges from the time of his dismissal until his actual reinstatement or, if reinstatement is no longer feasible, to give him separation pay equivalent to at least one month salary for every year of service.

SO ORDERED.

Quisumbing, Acting C.J. (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 179802. November 14, 2008]

MAGSAYSAY MARITIME CORP. and/or CONRADO N. DELA CRUZ and ODF JELL ASA, *petitioners, vs.* **JAIME M. VELASQUEZ and THE HONORABLE COURT OF APPEALS,** *respondents.*

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

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY (POEA) STANDARD EMPLOYMENT CONTRACT; PURPOSE. —** The standard employment contract for seafarers was formulated by the Philippine Overseas Employment Agency (POEA) pursuant to its mandate under Executive Order 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 Standard Employment Contract (POEA Contract) 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."

2. **ID.; ID.; ID.; SEAFARER'S FITNESS TO WORK; POEA RECOGNIZES ONLY THE DISABILITY GRADING PROVIDED BY COMPANY-DESIGNATED PHYSICIANS; CASE AT BAR. —** The POEA Contract is clear in its provisions when it provided who should determine the disability grading or fitness to work of seafarers. The POEA contract recognizes only the disability grading provided by the company-designated physicians. Section 20 B.3 of the POEA contract provides: 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 exceed one hundred twenty (120) days. x x x 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 resort in his forfeiture of the right to claim the above benefits. Moreover, Section 20 (B), no. 2, paragraph 2 of the POEA Contract provides: However, if after the 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. These provisions clearly illustrate that respondent's disability can only be assessed by the company-designated physician. If the company-designated physician declares him fit to work, then the seaman is bound by such declaration. Further, it should be noted that the claim for sickness and permanent disability benefits arose from the stipulations in the standard format contract of employment pursuant to a circular of the POEA. Such circular was intended for all parties involved in the employment of Filipino seamen on board any ocean-going vessel. The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them. Thus, the parties are both bound by the provisions of the POEA Contract which declares that the degree of disability or fitness to work of a seafarer should be assessed by the company-designated physician. In *German Marine Agencies v. NLRC,* the Court explicitly laid that it is the company-designated physician who should determine the degree of disability of the seaman or his fitness to work, thus: x x x In order to claim disability benefits under the Standard Employment Contract, it is the "company-designated" physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. x x x It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. There is no ambiguity in the wording of the Standard Employment Contract – the only qualification prescribed for the physician entrusted with the task of assessing the seaman's disability is that he be "company-designated." Again, in *Benjamin L. Sarocam v. Interorient Maritime Ent., Inc., and Demaco United Ltd,* the Court ruled that the opinion of the company-designated physician should be upheld over that of the doctors appointed by the seafarer considering that the basis of the findings of

the seafarer's doctor are the medical findings of the company physician. Undoubtedly, jurisprudence is replete with pronouncements that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer. In this particular case, respondent refused to accept the assessment made by the company-designated physician that he is fit to work. Under the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessel or the POEA Contract issued pursuant to DOLE Department Order No. 4 and POEA Memorandum Circular No. 9, both Series of 2000, respondent could not disregard the findings of the company-designated physician. Section 20-B, paragraph 3 of the POEA Contract provides: 3. x x x 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. It is beyond cavil that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability. But under the aforecited provision, when the seaman's private physician disagrees with the assessment of the company-designated physician, as here, a third doctor's opinion may be availed of in determining his disability. This however was not resorted to by the parties. As such, the credibility of the findings of their respective doctors was properly evaluated by the NLRC.

3. ID.; PERMANENT TOTAL DISABILITY; ELUCIDATED. — The Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In a catena of cases, the Court declared that disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. In addition, the Court in *GSIS v. Cadiz* and *Ijares v. CA* held that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Romulo P. Valmores for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 97098, which reversed and set aside the June 23, 2006 decision[2] and September 21, 2006 resolution[3] of the National Labor Relations Commission (NLRC) in NCR Case No. 044854-05.

The facts, as culled from the record, are as follows.

Respondent Jaime M. Velasquez was hired by petitioner Magsaysay Maritime Corporation as second cook for its foreign principal, co-petitioner ODF Jell ASA. The parties had a considerably long employment history covered by about ten (10) employment contracts wherein petitioners engaged respondent's services on board vessels owned by ODF Jell ASA. On July 28, 2003, while on duty as second cook on board the vessel M/T Bow Favour, respondent suffered high fever and was unable to work. He took fever relieving medicine but his condition worsened. By the fourth day, his body temperature reached 40.9°C. His extremities were swollen and he could not walk. He also had edema in the abdominal area. Respondent was brought to a hospital in Singapore where he was confined from August 12 to October 13, 2003. Thereafter, he was repatriated to the Philippines.

It is from this point onwards that the allegations of the parties differ.

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[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Martin S. Villarama Jr. and Arcangelita Romilla-Lontok, concurring, *rollo*, pp. 11-23.

[2] *Id*., at pp. 111-121.

[3] *Id*., at pp. 123-125.

In his pleadings, respondent alleged that upon his repatriation, he was not confined to St. Luke's Medical Center as he expected. He claimed that he was compelled to seek medical treatment from an independent doctor. On November 13, 2003, he consulted a certain Dr. Efren Vicaldo (Dr. Vicaldo) who diagnosed him to be suffering from *staphylococcal bacteremia, multiple metastatic abcesses, pleural effusion and hypertension* and declared his disability as Impediment Grade 1 (120%). Dr. Vicaldo further concluded that respondent was "unfit to resume work as seaman in any capacity." Hence, respondent filed a claim for disability benefits, illness allowance/ reimbursement of medical expenses, damages and attorney's fees but petitioners refused to pay.

Petitioners, on the other hand, maintained that upon respondent's repatriation on October 13, 2003, he was immediately referred to a company designated physician for further medical care and treatment; that the initial impression was *Systemic Staphylococcal Infections; Resolving*; that he was under the care of said physician for three (3) months during which he underwent extensive medications and treatment; that he was admitted and confined at St. Luke's Medical Center from October 13, 2003 to November 11, 2003; that progress reports on his recovery have been issued; that by January 5, 2004, respondent was declared as "cleared to work resumption as seafarer"; and that petitioners were the ones who shouldered respondent's hospitalization expenses.

On March 29, 2005, the Labor Arbiter rendered a decision in favor of respondent. Dispositively, the decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered ordering the respondents Magsaysay Maritime Corporation and/or Conrado N. Dela Cruz and ODF Jell ASA to pay complainant Jaime M. Velasquez the amount of SIXTY TWO THOUSAND TWO HUNDRED SIXTY US DOLLARS (US$62,260.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits and sickness allowance and 10% of the total monetary award by way of attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED.

From the foregoing decision, petitioners filed an appeal with the NLRC, alleging serious errors in the factual findings of the Labor Arbiter.

Upon review of the records, the NLRC made the following findings:

A careful review of the records shows that, in not one instance did complainant, by way of a contrary medical finding, assail the diagnosis arrived at by the company designated physician, Dr. Natalio G. Alegre II. As noted, the findings of Dr. Efren Vicaldo, complainant's private physician, and those of Dr. Alegre, bear consistency with each other save for his hypertensive condition. Above all these, complainant's credibility suffered a serious setback when he declared that he was seen by Dr. Alegre only twice and that there was no treatment given to him since repatriation (Records, pp. 88-89). Records belie such assertion. Copies of the medical reports accomplished by the company accredited physician would show that he was examined and treated by the latter for no less than eight (8) times (Records, pp. 128-135). As gleaned therefrom, complainant was placed under the care and supervision of Dr. Alegre for about ninety (90) days, his admission at St. Luke's Medical Center being on 13 October 2003 and with his discharge being had only on 11 November 2003. This negates anew complainant's claim that he was not treated at St. Luke's Medical Center. Further, on dates of 18 November 2003, 21 November 2003, December 1, 2003, December 4, 2003 and December 15, 2003, medical certificates of even dates bore results of complainant's physical examination. Finally, on 5 January 2004, complainant was cleared for sea duties, on the basis of the following findings:

> "His infection has already subsided and resolved.
>
> He has been off his anti-hypertensive medication for 1 week and his blood pressure is still acceptable at 140/90.
>
> Regular intake of anti-hypertensive medications is advised for strict compliance so that hypertension is controlled to prevent complications."

Given the earlier adverted consideration on such want of credence on complainant's part as gleaned from his assertions which were easily controverted by evidence on record, such notable conjectural tenor on the part of complainant's private physician as to the possible effects of his alleged hypertensive condition cannot be taken as sufficient basis to overcome the correctness of the medical findings arrived at by Dr. Alegre, not to mention that complainant was examined by his chosen physician only once. Aside from his alleged hypertensive condition which could be addressed to by oral medication, there exists no evidence that there is a direct causal connection between said alleged hypertensive condition and a condition of permanent and total disability being claimed by the complainant. Accordingly, the claim must be denied.

On June 23, 2006, the NLRC rendered a decision reversing that of the Labor Arbiter and dismissed respondent's complaint for lack of merit. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the decision under review is hereby **REVERSED** and **SET ASIDE** and another entered, **DISMISSING** the complaint for lack of merit.

SO ORDERED.

In arriving at such a disposition, the NLRC held:

Weighty considerations anchored on principles governing contracts and jurisprudence in support thereof find the complainant to observe its commitments under the POEA Standard Employment Contract (Article 1159, Civil Code of the Philippines). Said contract of employment specifically mentions that fitness to work or the degree of disability of a seafarer is within the competence of a company designated physician to establish (Section 20 (b), No. 2, paragraph 2 of the POEA Standard Employment Contract). Stated otherwise, the seaman is bound by the declaration of the company designated physician concerning his physical condition in relation to his work. Given this situation, the burden of proof rests upon him in order to establish the disability alleged in such findings. Whether complainant was successful in countering the declaration of fitness to work by the company designated physician, is a matter that merits serious concern.

Aggrieved, respondent elevated the matter to the CA *via* petition for *certiorari*.

On April 25, 2007, the CA rendered the herein challenged Decision setting aside the decision of the NLRC and reinstating that of the labor arbiter. The CA ratiocinated thus:

> That the company-designated physician did declare that petitioner is fit to sea duty should not prejudice petitioner's claim for disability benefits. In the first instance, it is well to note that there is doubt and question as to the accuracy of the declaration of the Dr. Alegre's "cleared to work resumption as seafarer." Such certification should not be taken as the only primary consideration, especially when there is contra finding by another doctor giving doubt to the findings of the company-designated physician. As held in the case of *Wallem Maritime Services, Inc. vs. NLRC*, "opinions of petitioner's doctor to this effect should not be given evidentiary weight as they are palpably self-serving and biased in favor of petitioners, and certainly could not be considered independent." The medical findings of Dr. Alegre, unsubstantiated by any other evidence, are suspect for being biased in favor of the private respondent. In the present case, petitioner has been rendered incapable of further pursuing his usual work because of his weakened bodily condition due to illness contracted during his employment. It is undisputed that petitioner had been under the employ of respondents since 1992 and had finished ten (10) contracts with them on board as second cook. While considering this long stint with the respondent, his non-redeployment more so puts in doubt the claim of respondent that petitioner was indeed fit to work. Moreover, it is well settled that strict rules of evidence are not applicable in claims for compensation and disability benefits. Petitioner having substantially established that he could not (sic) able to perform the same work as he used to before his repatriation, and was found both by his independent physician and Gleneagles Hospital in Singapore suffering from severe hypertension as well as other diagnosed illnesses which were contracted as a result of his exposure to the risks involved in the performance of his job, we find the NLRC to have acted in grave abuse of discretion in reversing and setting aside the decision of the Labor Arbiter awarding disability claims to petitioner.

Petitioners are now before the Court principally contending that the CA committed reversible error when it upheld the findings

of respondent's private physician rather than the findings of the company-designated physician.

We grant the petition.

The standard employment contract for seafarers was formulated by the Philippine Overseas Employment Agency (POEA) pursuant to its mandate under Executive Order 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."[4] Section 29 of the 1996 POEA Standard Employment Contract (POEA Contract) 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."[5]

The POEA Contract is clear in its provisions when it provided who should determine the disability grading or fitness to work of seafarers. The POEA contract recognizes only the disability grading provided by the company-designated physicians. Section 20 B.3 of the POEA contract provides:

> 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 exceed one hundred twenty (120) days.
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> x x x x x x x x x

[4] E.O. No. 247, Sec. 3(i) and (j).

[5] Art. 1700, New Civil Code. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

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 resort in his forfeiture of the right to claim the above benefits.

Moreover, Section 20 (B), no. 2, paragraph 2 of the POEA Contract provides:

However, if after the 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.

These provisions clearly illustrate that respondent's disability can only be assessed by the company-designated physician. If the company-designated physician declares him fit to work, then the seaman is bound by such declaration.

Further, it should be noted that the claim for sickness and permanent disability benefits arose from the stipulations in the standard format contract of employment pursuant to a circular of the POEA. Such circular was intended for all parties involved in the employment of Filipino seamen on board any ocean-going vessel.[6] The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them.[7] Thus, the parties are both bound by the provisions of the POEA Contract which declares that the degree of disability or fitness to work of a seafarer should be assessed by the company-designated physician.

In *German Marine Agencies v. NLRC*,[8] the Court explicitly laid that it is the company-designated physician who should

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[6] *Seagull Shipmanagement and Transport, Inc. v. NLRC,* G.R. No. 123619, June 8, 2000, 333 SCRA 236.

[7] *Metropolitan Bank and Trust Co. v. Wong*, G.R. No. 120859, June 26, 2001, 359 SCRA 608.

[8] 403 Phil. 572, 588 (2001).

determine the degree of disability of the seaman or his fitness to work, thus:

> x x x In order to claim disability benefits under the Standard Employment Contract, it is the "company-designated" physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. x x x It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. There is no ambiguity in the wording of the Standard Employment Contract — the only qualification prescribed for the physician entrusted with the task of assessing the seaman's disability is that he be "company-designated."

Again, in *Benjamin L. Sarocam v. Interorient Maritime Ent., Inc., and Demaco United Ltd*,[9] the Court ruled that the opinion of the company-designated physician should be upheld over that of the doctors appointed by the seafarer considering that the basis of the findings of the seafarer's doctor are the medical findings of the company physician.

Undoubtedly, jurisprudence is replete with pronouncements that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer. In this particular case, respondent refused to accept the assessment made by the company-designated physician that he is fit to work.

Under the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessel or the POEA Contract issued pursuant to DOLE Department Order No. 4 and POEA Memorandum Circular No. 9, both Series of 2000, respondent could not disregard the findings of the company-designated physician. Section 20-B, paragraph 3 of the POEA Contract provides:

> 3. x x x
>
> x x x x x x x x x

[9] G.R. No. 167813, June 27, 2006, 493 SCRA 502.

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.

It is beyond cavil that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability. But under the aforecited provision, when the seaman's private physician disagrees with the assessment of the company-designated physician, as here, a third doctor's opinion may be availed of in determining his disability. This however was not resorted to by the parties. As such, the credibility of the findings of their respective doctors was properly evaluated by the NLRC.

The Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In a catena of cases,[10] the Court declared that disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. In addition, the Court in *GSIS v. Cadiz* [11] and *Ijares v. CA* [12] held that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

Here, petitioner suffered from *Staphylococcal bacteremia*, a type of bacteria which usually infects the skin entering the bloodstream. Staphylococci normally grow in the nose and on the skin of 20% to 30% of healthy adults (and less commonly in the mouth; mammary glands; and urinary, intestinal, and upper respiratory tracts). These bacteria do not harm most of

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[10] *ECC v. Sanico*, G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271; *GSIS v. CA*, G.R. No. 117572, January 29, 1998, 285 SCRA 430, 436; *GSIS v. CA*, G.R. No. 116015, July 31, 1996, 260 SCRA 133, 138; *Bejerano v. ECC*, G.R. No. 84777, January 30, 1992, 205 SCRA 598, 602.

[11] G.R. No. 154093, July 8, 2003, 405 SCRA 450, 454.

[12] G.R. No. 105854, August 26, 1999, 313 SCRA 141, 149-150.

the time. However, a break in the skin, burn, or other injury may allow the bacteria to penetrate the body's defenses and cause infection. Commonly, staphylococcal infections produce collections of pus (abscesses), which can appear not only on the skin but also in internal organs. If properly treated with antibiotics, most healthy people who develop staphylococcal infections recover fully within a short time.[13]

The company-designated physician cleared respondent for work resumption upon finding that his infection has subsided after successful medication. We agree with the NLRC that the doctor more qualified to assess the disability grade of the respondent seaman is the doctor who regularly monitored and treated him. The company-designated physician possessed personal knowledge of the actual condition of respondent. Since the company-designated physician in this case deemed the respondent as fit to work, then such declaration should be given credence, considering the amount of time and effort the company doctor gave to monitoring and treating respondent's condition. It is undisputed that the recommendation of Dr. Vicaldo was based on a single medical report which outlined the alleged findings and medical history of respondent despite the fact that Dr. Vicaldo treated or examined respondent only once. On the other hand, the company-designated physician outlined the progress of respondent's successful treatment over a period of several months in several reports, as can be gleaned from the record. As between the findings of the company-designated physician (Dr. Alegre) and the physician appointed by respondent (Dr. Vicaldo), the former deserves to be given greater evidentiary weight.

All told, the Court finds and so rules that the CA committed reversible error in ignoring the medical assessment of the company-designated physician that respondent was cleared for work resumption as a seafarer and granting respondent's claim for disability on the basis of a single medical examination report of respondent's appointed physician contrary to the clear, unambiguous

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[13] http://www.answers.com/topic/staphylococcal_infection_3, citing Bennett, J. Claude, and Fred Plum, eds. Cecil *Textbook of Medicine*. Philadelphia, PA: W.B. Saunders Company, 1996.

provisions regarding disability benefit claims contained in the POEA Contract between the parties.

WHEREFORE, the instant petition is *GRANTED*. The assailed decision of the Court of Appeals in CA-G.R. SP No. 97098 is *REVERSED* and *SET ASIDE*. The decision of the NLRC, 2nd Division, is hereby *REINSTATED*.

SO ORDERED.

Carpio,[*] *Austria-Martinez,*[**] *Corona,* and *Carpio Morales,*[**] *JJ., concur.*

Puno, C.J., on official leave.

FIRST DIVISION

[G.R. No. 181441. November 14, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LARRY LOPEZ,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE AND POSSESSION OF DANGEROUS DRUGS; CASE AT BAR. — Sections 5 and 11, Article II of RA 9165 read: SEC. 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

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[*] Acting Chairperson of the First Division as per Special Order No. 534.

[**] Additional Members as per Special Order No. 535.

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. SEC. 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 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. The Court sustains the finding of the lower courts that the prosecution sufficiently established appellant's guilt beyond reasonable doubt for violation of Sections 5 and 11, Article II of RA 9165. The prosecution proved that a consummated sale of *shabu* transpired between the buy-bust team which included the confidential agent, on one hand, and the appellant on the other. PO1 Rafael Duaso, PO1 Guzman, and PO1 Miranda, who were members of the buy-bust team, testified that appellant sold *shabu* to the confidential agent, who simultaneously gave the marked money to appellant. The prosecution also established that the police officers recovered marijuana after searching appellant's body. The subject drugs were also proven to be methylamphetamine hydrochloride and marijuana, as evidenced by Field Test Report No. APPO-SOG-1101-2003-01 and the confirmatory tests subsequently conducted by Forensic Chemical Officer, P/Insp. Divina Dizon of the Nueva Ecija Crime Laboratory, as evidenced by her Chemistry Report No. D-298-2003.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED. — The factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and binding on this Court. In the present case, appellant gravely failed to show that the trial court overlooked or misapprehended any fact or circumstance of weight and substance to warrant a deviation from this rule. The Court sustains the trial court in giving credence to the testimonies of the prosecution's witnesses because the trial court is in a better position to evaluate the witnesses' deportment during the trial.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. — The alleged inconsistencies in the testimony of PO1 Miranda refer to trivial or minor matters, which do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witness' honesty. Inconsistencies on the existence of a pre-arranged signal and the markings on the buy-bust money pertain to peripheral matters and do not refer to the actual buy-bust operation itself — that crucial moment when the appellant was caught selling *shabu* — which might warrant a reversal of appellant's conviction. Besides, the employment of a pre-arranged signal, or the lack of it, is not indispensable in a buy-bust operation. Also, the non-presentation of the buy-bust money is not fatal to the successful prosecution of a drug case.

4. ID.; ID.; FRAME-UP; NOT APPRECIATED IN CASE AT BAR. — Appellant did not substantiate his defense of frame-up. He did not present evidence that the prosecution witnesses had motive to falsely charge him. Neither did appellant prove that the police officers did not perform their duties regularly. As the Court of Appeals held, the frame-up theory was a mere afterthought.

5. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH INCIDENT TO A LAWFUL ARREST; CASE AT BAR. — Section 12 of Rule 126 expressly provides that "[a] person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant." In this case, the arresting officers were justified in arresting appellant as he had just committed a crime when he sold *shabu* to the confidential agent. A buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting drug

offenders. Considering the legality of appellant's warrantless arrest, the subsequent warrantless search resulting in the recovery of marijuana found in appellant's body is also valid.

6. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE OF DANGEROUS DRUGS; PROPER PENALTY. — Considering that appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165, the Court of Appeals correctly affirmed the trial court's imposition of life imprisonment and a fine of ₱500,000 in Criminal Case No. 3188 for the illegal sale of *shabu*.

7. ID.; ID.; POSSESSION OF DANGEROUS DRUGS; PROPER PENALTY. — While appellant is also guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165, the Court modifies the penalty imposed in Criminal Case No. 3189 for illegal possession of marijuana. In *People v. Mateo*, the Court held that the period of imprisonment imposed on the accused should not be a straight penalty, but should be an indeterminate penalty. Thus, the trial court erred in imposing the straight penalty of imprisonment of fourteen (14) years. Section 1 of the Indeterminate Sentence Law provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same." Accordingly, the penalty that should be imposed on appellant is imprisonment ranging from twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum. The Court affirms the ₱300,000 fine imposed by the trial court.

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 25 September 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 02031. The Court of Appeals affirmed the 21 December 2005 Joint Decision[2] of the Regional Trial Court, Branch 96, Baler, Aurora, in Criminal Case Nos. 3188 and 3189 finding appellant Larry Lopez guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The prosecution charged appellant with violation of Sections 5 and 11 of RA 9165 in two Informations which read:

CRIMINAL CASE NO. 3188

That on or about 11:05 o'clock in the morning of November 1, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully sell and convey unto a poseur buyer one plastic sachet containing 0.06 gram of *shabu*, a prohibited drug, for three (3) ₱100.00 and one (1) ₱200.00 marked bills without any license or permit from the authorities.

CONTRARY TO LAW.

CRIMINAL CASE NO. 3189

That on or about 11:00 o'clock in the morning of November 1, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully have in his possession and control three (3) pieces of

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[*] Per Special Order No. 534.

[1] *Rollo*, pp. 2-23. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose C. Reyes, Jr. and Japar B. Dimaampao, concurring.

[2] CA *rollo*, pp. 11- 17. Penned by Judge Corazon D. Soluren.

marlboro cigarettes packs, containing 6.20 grams of marijuana leaves and fruiting tops without any permit or license from the authorities.

CONTRARY TO LAW.[3]

Upon arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution established that on 1 November 2003, at around 10:00 a.m., a certain *barangay* official went to the Baler Police Station reporting the peddling of illegal drugs by appellant. A buy-bust operation was planned where PO1 Romeo Miranda (PO1 Miranda) was assigned as poseur-buyer. PO1 Miranda accompanied a confidential agent in going to the residence of appellant to buy ₱500 worth of *shabu*. Appellant told them that he would deliver the *shabu* in front of Ditha's Hardware in half an hour. The members of the buy-bust team strategically stationed themselves near the place of the transaction. At around 11:05 a.m., the appellant, driving his tricycle, arrived and the confidential agent waved at him to stop. PO1 Miranda and the confidential agent approached appellant, they talked for a moment, and the exchange took place. The agent handed the marked money to appellant, who simultaneously handed the sachet of *shabu*. Immediately thereafter, the agent handed the *shabu* to PO1 Miranda who then held the appellant. The other members of the buy-bust team rushed to the crime scene and arrested appellant. After apprising appellant of the Miranda Rights, PO1 Sonny Guzman (PO1 Guzman) searched appellant's body which yielded dried marijuana leaves wrapped in two Marlboro cigarette packs and one cigarette foil.

Appellant, on the other hand, denied the charges and insisted that he was framed-up. Appellant claimed that at around 11:05 in the morning of 1 November 2003, he was driving his tricycle to bring his passengers, namely Teresita Fernando and Raymund Putol, to the cemetery. Upon reaching Ditha's Hardware, two men in civilian clothes blocked their way and identified themselves as policemen. Thereafter, appellant was suddenly and forcibly pulled down from the tricycle and handcuffed. After the policemen

[3] *Rollo*, p. 3.

frisked appellant, they exclaimed "Positive" showing a sachet. Then, he was arrested and brought to the police station where he was interrogated and searched again.

The dispositive portion of the 21 December 2005 Joint Decision of the Regional Trial Court, Branch 96, Baler, Aurora, reads:

> WHEREFORE, premises considered, the Court hereby renders judgment as follows:
>
> 1. Finding Larry Lopez *y* Parinia GUILTY beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 for the sale of 0.06 gram of *shabu* and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (₱500,000.00);
>
> 2. Finding Larry Lopez *y* Parinia GUILTY beyond reasonable doubt of Violation of Section 11, Article II of R.A. 9165 for possession of 6.20 grams of dried marijuana leaves and hereby sentences him to suffer the penalty of imprisonment of Fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> The confiscated *shabu* and dried marijuana leaves are hereby ordered to be turned over to the Office of the Provincial Prosecutor of Aurora, which, in turn, shall coordinate with the proper government agency for the proper disposition and destruction of the same.
>
> SO ORDERED.[4]

On appeal, appellant pointed out that there were inconsistencies on the following matters: (1) existence of a pre-arranged signal; and the (2) recollection by PO1 Miranda of the markings on the buy-bust money. Appellant also argued that the subsequent warrantless search and seizure was illegal because he was never caught *in flagrante delicto* selling *shabu*. Hence, the marijuana recovered from him was inadmissible.

The Court of Appeals' Ruling

In a Decision dated 25 September 2007, the Court of Appeals affirmed the trial court's decision finding appellant guilty beyond

[4] CA *rollo*, p. 17.

reasonable doubt of the offenses charged. The appellate court found that PO1 Miranda satisfactorily explained his answer to the question regarding the pre-arranged signal. The appellate court also ruled that failure to recall the markings on the buy-bust money was probably due to the length of time between the date of the incident and the date of PO1 Miranda's testimony. At any rate, the markings on the marked money are immaterial because the presentation of the marked money is not even necessary for the successful prosecution of the offenses charged. The Court of Appeals also rejected appellant's claim of frame-up considering that there was no evidence of any ulterior motive for the police officers to falsely charge appellant of the offenses. It appears that the frame-up theory was a mere afterthought.

On the warrantless search and seizure, the Court of Appeals held that it is valid having been made after a lawful warrantless arrest, citing Section 12, Rule 126 of the Rules of Court.[5]

Hence, this appeal.

The Issue

The sole issue in this case is whether appellant is guilty beyond reasonable doubt of violation of (1) Section 5, Article II of RA 9165 for the sale of 0.06 gram of *shabu*; and (2) Section 11, Article II of RA 9165 for the possession of 6.20 grams of dried marijuana leaves.

The Ruling of the Court

The appeal lacks merit.

Sections 5 and 11, Article II of RA 9165 read:

SEC. 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,

[5] The Court of Appeals erroneously cited Section 13 of Rule 126.

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.

SEC. 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

(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.

The Court sustains the finding of the lower courts that the prosecution sufficiently established appellant's guilt beyond reasonable doubt for violation of Sections 5 and 11, Article II of RA 9165. The prosecution proved that a consummated sale of *shabu* transpired between the buy-bust team which included the confidential agent, on one hand, and the appellant on the other. PO1 Rafael Duaso, PO1 Guzman, and PO1 Miranda, who were members of the buy-bust team, testified that appellant sold *shabu* to the confidential agent, who simultaneously gave the marked money to appellant.[6] The prosecution also established that the police officers recovered marijuana after searching appellant's body. The subject drugs were also proven to be methylamphetamine hydrochloride and marijuana, as evidenced by Field Test Report No. APPO-SOG-1101-2003-01 and the

[6] *Rollo,* pp. 10-16.

confirmatory tests subsequently conducted by Forensic Chemical Officer, P/Insp. Divina Dizon of the Nueva Ecija Crime Laboratory, as evidenced by her Chemistry Report No. D-298-2003.

Generally, the factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and binding on this Court.[7] In the present case, appellant gravely failed to show that the trial court overlooked or misapprehended any fact or circumstance of weight and substance to warrant a deviation from this rule.

First, the alleged inconsistencies in the testimony of PO1 Miranda refer to trivial or minor matters, which do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witness' honesty.[8] Inconsistencies on the existence of a pre-arranged signal and the markings on the buy-bust money pertain to peripheral matters and do not refer to the actual buy-bust operation itself — that crucial moment when the appellant was caught selling *shabu* — which might warrant a reversal of appellant's conviction.[9] Further, the Court sustains the trial court in giving credence to the testimonies of the prosecution's witnesses because the trial court is in a better position to evaluate the witnesses' deportment during the trial.[10] Besides, the employment of a pre-arranged signal, or the lack of it, is not indispensable in a buy-bust operation.[11] Also, the

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[7] *People v. Mateo*, G.R. No. 179478, 28 July 2008; *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194; *People v. Lim*, 435 Phil. 640 (2002); *People v. Pacis*, 434 Phil. 148 (2002). See also *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537.

[8] *People v. Fernando*, G.R. No. 170836, 4 April 2007, 520 SCRA 675, 683 citing *People v. Madriaga*, G.R. No. 82293, 23 July 1992, 211 SCRA 698, 709-712.

[9] See *People v. Fernando*, G.R. No. 170836, 4 April 2007, 520 SCRA 675, 684 citing *People v. Chang*, 382 Phil. 669 (2000).

[10] *People v. Dilao*, G.R. No. 170359, 27 July 2007, 528 SCRA 427; *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537; *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280.

[11] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187.

non-presentation of the buy-bust money is not fatal to the successful prosecution of a drug case.[12]

Second, appellant did not substantiate his defense of frame-up. He did not present evidence that the prosecution witnesses had motive to falsely charge him. Neither did appellant prove that the police officers did not perform their duties regularly.[13] As the Court of Appeals held, the frame-up theory was a mere afterthought.

Third, Section 12 of Rule 126 expressly provides that "[a] person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant." In this case, the arresting officers were justified in arresting appellant as he had just committed a crime when he sold *shabu* to the confidential agent. A buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting drug offenders.[14] Considering the legality of appellant's warrantless arrest, the subsequent warrantless search resulting in the recovery of marijuana found in appellant's body is also valid.[15]

Considering that appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165, the Court of Appeals correctly affirmed the trial court's imposition of life imprisonment and a fine of ₱500,000 in Criminal Case No. 3188 for the illegal sale of *shabu*.

While appellant is also guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165, the Court modifies the penalty imposed in Criminal Case No. 3189 for illegal possession of marijuana. In *People v. Mateo*,[16] the Court held

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[12] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 330 citing *People v. Eugenio*, 443 Phil. 411 (2003).

[13] *People v. Nicolas, supra*. See also *People v. Cabugatan, supra*.

[14] *People v. Bohol*, G.R. No. 171729, 28 July 2008.

[15] *Id.*; *People v. Navarro*, G.R. No. 173790, 11 October 2007, 535 SCRA 644.

[16] G.R. No. 179036, 28 July 2008.

that the period of imprisonment imposed on the accused should not be a straight penalty, but should be an indeterminate penalty. Thus, the trial court erred in imposing the straight penalty of imprisonment of fourteen (14) years.

Section 1 of the Indeterminate Sentence Law[17] provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same."[18] Accordingly, the penalty that should be imposed on appellant is imprisonment ranging from twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum. The Court affirms the ₱300,000 fine imposed by the trial court.

WHEREFORE, the Court *AFFIRMS* the 25 September 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02031 with the *MODIFICATION* that the penalty in Criminal Case No. 3189 shall be imprisonment for twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and a fine of ₱300,000.

SO ORDERED.

Austria-Martinez,[**] *Corona, Carpio Morales,*[***] and *Leonardo-de Castro, JJ.,* concur.

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[17] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES, approved and effective on 5 December 1933 (Act No. 4103, as amended).

[18] *People v. Bohol, supra* note 14.

[**] Designated member per Special Order No. 535.

[***] Designated member per Special Order No. 535.

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— Proper remedy to assail decisions of the Voluntary Arbitrator. (Mora *vs*. Avesco Marketing Corp., G.R. No. 177414, Nov. 14, 2008) p. 827

Points of law, issues, theories and arguments — Issues in a criminal case open entire case for review, even on an unassigned error. (People *vs*. Talan, G.R. No. 177354, Nov. 14, 2008) p. 812

— Matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time; rationale. (Phil. National Oil Company *vs*. Maglasang, G.R. No. 155407, Nov. 11, 2008) p. 534

ARREST

Warrants of arrest — Determination of probable cause is mandatory before issuance thereof. (Atty. Tabujara lll *vs*. People, G.R. No. 175162, Oct. 29, 2008) p. 216

— Determination of probable cause is not merely a procedural but a substantive rule because it gives flesh to two of the most sacrosanct guarantees found in the fundamental law, the guarantee against unreasonable searches and seizures and the due process requirement. *(Id.)*

— Issuance thereof is not mandatory; investigating judge must make a finding that there is a necessity of placing the accused under immediate custody in order not to frustrate the ends of justice. *(Id.)*

ATTORNEYS

Conduct of — Issuance of worthless checks indicates a lawyer's unfitness for the trust and confidence reposed on her. (Wilkie *vs*. Atty. Limos, A. C. No. 7505, Oct. 24, 2008) p. 1

Disbarment — Grounds therefor, cited. (Wilkie *vs*. Atty. Limos, A. C. No. 7505, Oct. 24, 2008) p. 1

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Discipline of lawyers — Cannot be cut short by a compromise or withdrawal of the charges. (Wilkie *vs*. Atty. Limos, A.C. No. 7505, Oct. 24, 2008) p. 1

Duties — As an officer of the court, cited. (Fudot *vs*. Cattleya Land, Inc., G.R. No. 171008, Oct. 24, 2008) p. 82

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*Membership to the b*ar — A privilege demanding a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law. (Wilkie *vs*. Atty. Limos, A.C. No. 7505, Oct. 24, 2008) p. 1

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— Professional standing of counsel to be properly considered as one of the factors in determining the award of attorney's fees should be established during trial proper, where the other party could raise objections and cross-examine the

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BOUNCING CHECKS LAW (B.P. BLG. 22)

Gravamen of the offense — Act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. (Dy *vs*. People, G.R. No. 158312, Nov. 14, 2008) p. 678

SC Administrative Circular No. 12-2000 — Authorizing the non-imposition of the penalty of imprisonment in B.P. 22 cases, clarified. (Lunaria *vs*. People, G.R. No. 160127, Nov. 11, 2008) p. 546

Violation of — Elements. (Dy *vs*. People, G.R. No. 158312, Nov. 14, 2008) p. 678

(Lunaria *vs*. People, G.R. No. 160127, Nov. 11, 2008) p. 546

Lack of criminal intent on the part of the accused is irrelevant; mere act of issuing a worthless check is a malum prohibitum. *(Id.)*

BRIBERY

Accusation of — Easy to concoct and difficult to disprove as the complainant must present a panoply of evidence in support of such an accusation (Fudot *vs*. Cattleya Land, Inc., G.R. No. 171008, Oct. 24, 2008) p. 82

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Petition for — A motion for reconsideration is an indispensable condition. (Fajardo *vs*. CA, G.R. No. 157707, Oct. 29, 2008) p. 146

— Denial of a motion to dismiss cannot be questioned under Rule 65 of the Rules of Court, except when the trial court gravely abused its discretion in denying the motion. (Urethane Trading Specialist, Inc. *vs*. Ong, G.R. No. 164632, Oct. 29, 2008) p. 176

— Dismissed petition may be reinstated when compelling reasons exist or when the dismissal is grounded merely on technicalities. (PCI Travel Corp. *vs*. NLRC [3rd Division], G.R. No. 154379, Oct. 31, 2008) p. 299

— Petitioner must allege and prove the existence of grave abuse of discretion. (Fajardo *vs*. CA, G.R. No. 157707, Oct. 29, 2008) p. 146

— When proper. (Mora *vs*. Avesco Marketing Corp., G.R. No. 177414, Nov. 14, 2008) p. 827

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CLERKS OF COURT

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Simple neglect of duty — Defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference. (Atty. Sesbreño *vs*. Judge Goko, Jr., A.M. No. RTJ-08-2144, Nov. 03, 2008) p. 380

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Allegations — Determine the real nature of the crime charged. (Nasi-Villar *vs*. People, G.R. No. 176169, Nov. 14, 2008) p. 804

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Administrative search — Discussed in relation to the drug testing policy for employees and students; intrusion allowed by law, elucidated. (Social Justice Society *vs*. Dangerous Drugs Board, G.R. No. 157870, Nov. 03, 2008) p. 393

Chain of custody rule/Custody and disposition of confiscated drugs — Elucidated. (People *vs*. Dela Cruz, G.R. No. 177222, Oct. 29, 2008) p. 259

— Identity and integrity of the seized drugs are compromised by the arresting officers' non-compliance with the procedure. *(Id.)*

— There must be proof that the two requirements were met before any non-compliance with the procedure may be said to fall within the scope of the proviso of the Implementing Rules and Regulations of R.A. No. 9165. *(Id.)*

Drug-testing policy — Declared constitutional; reasons. (Social Justice Society *vs.* Dangerous Drugs Board, G.R. No. 157870, Nov. 03, 2008) p. 393

Illegal possession of dangerous or regulated drugs — Imposable penalty. (People *vs.* Lopez, G.R. No. 181441, Nov. 14, 2008) p. 853

— When proved beyond reasonable doubt. *(Id.)*

Illegal sale of dangerous drugs — Elements. (People *vs*. Lopez, G.R. No. 181441, Nov. 14, 2008) p. 853

— Imposable penalty. *(Id.)*

CONSPIRACY

Existence of — Proof of the agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties. (People *vs*. Nueva, G.R. No. 173248, Nov. 03, 2008) p. 431

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Contempt of court — Defined as disobedience to the court by setting up an opposition to its authority, justice and dignity. (Sps. Oliveros *vs*. Judge Sison, A.M. No. RTJ-07-2050, Oct. 29, 2008) p. 140

(Fudot *vs.* Cattleya Land, Inc., G.R. No. 171008, Oct. 24, 2008) p. 82

Indirect contempt — Irresponsible and baseless statements of malicious and unfounded accusation against a sitting Justice of the Court have sullied the dignity and authority of the Supreme Court. (Fudot *vs*. Cattleya Land, Inc., G.R. No. 171008, Oct. 24, 2008) p. 82

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Conduct required — Failure to faithfully adhere to the public trust character of public office, demanded from those who are involved in the sacred task of the administration of justice, warrants disciplinary action. (OCAD *vs*. Ret. Judge Gako, Jr., A.M. No. RTJ-07-2074, Oct. 24, 2008) p. 46

— Professionalism, respect for the rights of others, good manners and right conduct are expected of all court employees. (Judge Mariano *vs*. Mondala, A.M. No. P-06-2273, Oct. 24, 2008) p. 32

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— One who invokes good faith must show honesty of intention, free from knowledge of circumstances which ought to put one upon inquiry. *(Id.)*

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Designation of the offense — It is not the use of the words "qualifying" or "qualified by" that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category. (People *vs*. Rosas, G.R. No. 177825, Oct. 24, 2008) p. 111

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Burden of proof — Prosecution must not rely on the weakness of the evidence of the defense but must prove its case beyond reasonable doubt. (Ubales *vs*. People, G.R. No. 175692, Oct. 29, 2008) p. 238

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Actual damages — Award thereof is compensation for the pecuniary loss suffered. (Sps. Flores *vs*. Sps. Pineda, G.R. No. 158996, Nov. 14, 2008) p. 699

— It is necessary to prove actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable. (People *vs*. Nueva, G.R. No. 173248, Nov. 03, 2008) p. 431

(Polo *vs*. People, G.R. No. 160541, Oct. 24, 2008) p. 76

Attorney's fees — Professional standing of a counsel, to be properly considered as one of the factors in determining the award thereof, should be established during trial proper,

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— When may be awarded. (Sps. Flores *vs*. Sps. Pineda, G.R. No. 158996, Nov. 14, 2008) p. 699

Civil indemnity — No proof needed other than the death of the victim. (Sps. Flores *vs*. Sps. Pineda, G.R. No. 158996, Nov. 14, 2008) p. 699

Compensation for loss of earning capacity — Factors to consider in determining compensation for the loss of earning capacity; formula. (People *vs*. Nueva, G.R. No. 173248, Nov. 03, 2008) p. 431

Exemplary damages — Award thereof is imposed by way of example or correction for the public good. (Sps. Flores *vs*. Sps. Pineda, G.R. No. 158996, Nov. 14, 2008) p. 699

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— When awarded. (Sps. Flores *vs*. Sps. Pineda, G.R. No. 158996, Nov. 14, 2008) p. 699

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Illegal possession of regulated drugs — Imposable penalty. (People *vs*. Lopez, G.R. No. 181441, Nov. 14, 2008) p. 853

— When proven beyond reasonable doubt. *(Id.)*

Illegal sale of drugs — Imposable penalty. (People *vs*. Lopez, G.R. No. 181441, Nov. 14, 2008) p. 853

— When established. *(Id.)*

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— Function; elucidated. *(Id.)*

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Permanent total disability — Applied in the case of seafarers; explained. (Magsaysay Maritime Corp. *vs*. Velasquez, G.R. No. 179802, Nov. 14, 2008) p. 839

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Foreign divorce — Recognized in the Philippines provided divorce decree is proven as a fact and as valid under the national law of the alien spouse. (Bayot *vs*. CA, G.R. No. 155635, Nov. 07, 2008) p. 452

DOCKET FEES

Appellate court docket and other lawful fees — As a matter of convention, litigants invariably opt to use the postal money order system to pay such fees not only for its expediency but also for the official nature of transactions coursed through this system. (American Express Int'l., Inc. *vs*. Judge Sison, G.R. No. 172901, Oct. 29, 2008) p. 182

Payment of — Liberal application of the rules in cases of failure to pay within the prescribed period. (American Express Int'l., Inc. *vs*. Judge Sison, G.R. No. 172901, Oct. 29, 2008) p. 182

— Must be done within the reglementary or prescriptive period, otherwise the petition shall be dismissed; exception. *(Id.)*

— No specific provision in the Rules of Court prescribing the manner by which the docket or appeal fees should be paid. *(Id.)*

— The payment of the docket fee within the prescribed period is mandatory. (*Id.*)

EMINENT DOMAIN

"Taking" — Elucidated. (Phil. National Oil Company *vs*. Maglasang, G.R. No. 155407, Nov. 11, 2008) p. 534

EMPLOYEES, KINDS OF

Managerial employees — Entitled to security of tenure and cannot be arbitrarily dismissed at any time and without cause as reasonably established in an appropriate investigation. (U-bix Corp. *vs*. Hollero, G.R. No. 177647, Oct. 31, 2008) p. 357

Probationary employees — A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. (Woodridge School *vs*. Benito, G.R. No. 160240, Oct. 29, 2008) p. 154

— Enjoy security of tenure in the sense that during their probationary employment, they cannot be dismissed except for cause or when they fail to qualify as regular employees or upon expiration of their contracts of probationary employment. *(Id.)*

— Probationary employees' security of tenure is limited to the period of their probation. *(Id.)*

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — Administrative functions relating to insurance agents' work in pursuit of their agency's contractual obligations are not indicative of control. (Tongko *vs*. Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Nov. 07, 2008; *Quisumbing, J., dissenting opinion*) p. 476

— Elements. *(Id.)*

— Not all forms of control would establish an employer-employee relationship; expounded. *(Id.)*

EMPLOYMENT

Probationary appointment — Purpose; the word "probationary" is used to describe the period of employment, it implies the purpose of the term or period. (Woodridge School *vs*. Benito, G.R. No. 160240, Oct. 29, 2008) p. 154

EMPLOYMENT, TERMINATION OF

Award of backwages and separation pay — No basis in view of the non-existent employer-employee relationship. (Tongko *vs*. Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Nov. 07, 2008; *Quisumbing, J., dissenting opinion*) p. 476

Burden of proof in termination cases — Rests on the employer to prove that the termination was for a valid or authorized cause. (Tongko *vs*. Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Nov. 07, 2008) p. 476

Illegal dismissal — Remedies of an illegally dismissed employee. (Tongko *vs*. Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Nov. 07, 2008) p. 476

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Two written notice requirements — Explained. (Tongko *vs*. Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Nov. 07, 2008) p. 476

Voluntary resignation of employees — Must be sufficiently established by the employer when interposing the defense of resignation. (Mora *vs.* Avesco Marketing Corp., G.R. No. 177414, Nov. 14, 2008) p. 827

ESTAFA

Estafa by means of deceit through false pretenses or fraudulent acts — Elements of damage and deceit must be established with satisfactory proof to warrant conviction. (Dy *vs.* People, G.R. No. 158312, Nov. 14, 2008) p. 678

Estafa by means of deceit through postdating on issuing a check — Elements thereof, not established. (Dy *vs.* People, G.R. No. 158312, Nov. 14, 2008) p. 678

— Good faith is considered a defense to a charge of estafa by postdating a check. *(Id.)*

Estafa with abuse of confidence through misappropriation or conversion — Elements, elucidated. (Sta. Catalina *vs.* People, G.R. No. 167805, Nov. 14, 2008) p. 726

ESTOPPEL

Doctrine of — When applicable. (Bayot *vs.* CA, G.R. No. 155635, Nov. 07, 2008)

EVIDENT PREMEDITATION

As a qualifying circumstance — Elements. (People *vs.* Nueva, G.R. No. 173248, Nov. 03, 2008) p. 431

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EXECUTIVE DEPARTMENT

Midnight appointments — Prohibition applies only to presidential appointments. (Quirog *vs.* Gov. Aumentado, G.R. No. 163443, Nov. 11, 2008) p. 555

EXEMPLARY DAMAGES

Award of — Imposed by way of example or correction for the public good. (Sps. Flores *vs*. Sps. Pineda, G.R. No. 158996, Nov. 14, 2008) p. 699

— When allowed. (People *vs*. Nueva, G.R. No. 173248, Nov. 03, 2008) p. 431

Purpose — Imposed as a deterrent against or as a negative incentive to curb socially deleterious actions. (PCI Bank *vs*. Alejandro, G.R. No. 175587, Oct. 24, 2008) p. 107

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Paragraph 2 of Article 26 of — Twin elements for application. (Bayot *vs*. CA, G.R. No. 155635, Nov. 07, 2008)

FORUM SHOPPING

Certification against forum-shopping — A President of a corporation is authorized to sign the same without need of a Board resolution. (PCI Travel Corp. *vs*. NLRC [3rd Division], G.R. No. 154379, Oct. 31, 2008) p. 299

— May be relaxed in order to serve the ends of justice. (Woodridge School *vs*. Benito, G.R. No. 160240, Oct. 29, 2008) p. 154

— Non-compliance with any of the undertakings in the certification against forum shopping shall constitute indirect contempt of court. (Sps. Oliveros *vs*. Judge Sison, A.M. No. RTJ-07-2050, Oct. 29, 2008) p. 140

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Defense of — Viewed by the court with disfavor, for it can easily be concocted but is difficult to prove. (People *vs*. Lopez, G.R. No. 181441, Nov. 14, 2008) p. 853

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Hoarding — Not an act within the contemplation of the Intellectual Property Code but more specifically covered by Republic Act No. 623. (Coca-Cola Bottlers, Phils., Inc. [CCBPI], Naga Plant *vs.* Gomez, G.R. No. 154491, Nov. 14, 2008) p. 642

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Order denying a motion to dismiss — Discussed. (Quisumbing *vs*. Sandiganbayan [5th Div.], G.R. No. 138437, Nov. 14, 2008) p. 633

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Administrative complaint against — Delay in rendering a decision or order; penalty. (Atty. Sesbreño *vs*. Judge Goko, Jr., A.M. No. RTJ-08-2144, Nov. 03, 2008) p. 380

— Failure to comply with directives of the Supreme Court; penalty. *(Id.)*

Code of Judicial Conduct — Judges should administer their office with due regard to the integrity of the system itself, remembering that they are not depositories of arbitrary power, but judges under the sanction of law. (OCAD *vs*. Ret. Judge Gako, Jr., A.M. No. RTJ-07-2074, Oct. 24, 2008) p. 46

Delay in rendering a decision — Imposable penalty. (Plata *vs*. Judge Torres, A.M. No. MTJ-08-1721, Oct. 24, 2008) p. 12

Disciplinary action against — It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into a judge's criminal, civil or administrative liability may be said to have opened, or closed. (Sps. Oliveros *vs*. Judge Sison, A.M. No. RTJ-07-2050, Oct. 29, 2008) p. 140

Duties — Not strictly confined to judicial functions, as they are also administrators of their courts. (Atty. Sesbreño *vs*. Judge Goko, Jr., A.M. No. RTJ-08-2144, Nov. 03, 2008) p. 380

— To dispose of cases promptly. (Plata *vs*. Judge Torres, A.M. No. MTJ-08-1721, Oct. 24, 2008) p. 12

Gross ignorance of the law — When not established by substantial evidence. (Magpali *vs*. Judge Pardo, A.M. No. RTJ-08-2146, Nov. 14, 2008) p. 628

Gross misconduct and insubordination — Committed for failure to comply with the directives of the Supreme Court. (Plata *vs*. Judge Torres, A.M. No. MTJ-08-1721, Oct. 24, 2008) p. 12

JUDGMENTS

Immutability of final judgment — A final and executory order can no longer be disturbed no matter how erroneous it may be; any judicial error should be corrected through an appeal and not through repeated suits on the same claim. (NHA *vs*. Jao, G.R. No. 156850, Oct. 24, 2008) p. 67

— The Supreme Court is without jurisdiction to modify, much less, reverse, a final and executory judgment. (Ponciano, Jr. *vs*. Laguna Lake Dev't Authority, G.R. No. 174536, Oct. 29, 2008) p. 194

JUDGMENTS, EXECUTION OF

Execution and satisfaction of judgment — A judgment lien will not legally attach if the subject properties are covered by statutory provisions which require certain conditions before they could come into play. (Associated Labor Unions *vs*. CA, G.R. No. 156882, Oct. 31, 2008) p. 316

— A levy on execution must be imposed over the subject properties to constitute a judgment lien thereon. *(Id.)*

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Proper disposition of cases — Members of the bench are exhorted to strictly adhere to the prescribed period set by the Constitution to prevent delay, a major culprit in the erosion of public faith and confidence in our justice system. (Plata *vs*. Judge Torres, A.M. No. MTJ-08-1721, Oct. 24, 2008) p. 12

— The 1987 Constitution requires trial judges to dispose of the court's business promptly and to decide cases and matters within three (3) months from filing of the last pleading, brief or memorandum. *(Id.)*

LACHES

Doctrine of — Elements. (Associated Labor Unions *vs*. CA, G.R. No. 156882, Oct. 31, 2008) p. 316

— Serves to deprive a party guilty of it of any judicial remedies. *(Id.)*

LAND REGISTRATION

Confirmation of imperfect title — Any period of possession prior to the date when the subject property was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession. (Ponciano, Jr. *vs*. Laguna Lake Dev't. Authority, G.R. No. 174536, Oct. 29, 2008) p. 194

Public Land Act (C.A. No. 141) — Applies only to agricultural lands. (Ponciano, Jr. *vs*. Laguna Lake Dev't Authority, G.R. No. 174536, Oct. 29, 2008) p. 194

— Section 48 thereof specifically identifies the persons who are entitled to the judicial confirmation or legalization of their imperfect or incomplete title to the land. (Ponciano, Jr. *vs*. Laguna Lake Dev't. Authority, G.R. No. 174536, Oct. 29, 2008) p. 194

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LOCAL GOVERNMENT UNITS

Power of reclassification and conversion of lands — A city or municipality can reclassify land only through the enactment of an ordinance. (Phil. National Oil Company *vs*. Maglasang, G.R. No. 155407, Nov. 11, 2008) p. 534

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As a form of damages — Absence of documentary evidence to substantiate the claim for the loss will not preclude recovery of such loss. (Polo *vs*. People, G.R. No. 160541, Oct. 24, 2008) p. 76

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— In rape cases, the credibility of the victim's testimony is almost always the single most important factor. (People *vs*. Talan, G.R. No. 177354, Nov. 14, 2008) p. 812

— Inconsistencies between a witness' sworn declaration and her testimony in open court do not necessarily impair her credibility. (People *vs*. Lopez, G.R. No. 181441, Nov. 14, 2008) p. 853

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— Testimony of a single witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict. (Revita *vs*. People, G.R. No. 177564, Oct. 31, 2008) p. 340

— There is no standard form of behavioral response when one is confronted with a strange, startling, frightful, or traumatic experience. *(Id.)*

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Of The Philippines: A Commentary 939 (2003) 404
J. Bernas, S.J., The 1987 Constitution Of The Republic
Of The Philippines: A Commentary 604 (1996) 406
J.C. Campos, Jr. And M.C. Lopez-Campos, Notes and Selected
Cases On Negotiable Instruments Law, 351 (3rd Ed., 1971) 690
Cruz, Constitutional Law 4 (2000) 405
I.A. Cruz, Constitutional Law (1993 Ed.), P. 253 811
De Leon and De Leon, Jr., The National Internal
Revenue Code Annotated, Volume 2 (2003), P. 198 765
Martin, C.R.A., Law Relating to Medical Malpractice
(2nd Ed.), p. 361 706
Solis, P., Medical Jurisprudence (1980 Ed.), p. 141 709

II. FOREIGN AUTHORITIES

BOOKS

61 Am. Jur. 2d §200, 359 ..... 706, 714
62 Am. Jur. 2d, Privacy, Sec. 1, 17 413-414
Bennett, J. Claude, and Fred Plum, eds. Cecil Textbook
of Medicine 852
Bigelow, Bills, Notes and Checks, 2nd Ed., P. 13 689
Cooley, Const. Lim. 630 (8th Ed.) 419
Cooley on Torts, Sec. 135, Vol. 1, 4th ed., [1932] 413
Harrison's Principles of Internal Medicine,
17th Ed., p. 2277 708-709
Kelly's Textbook of Internal Medicine (4th ed.),
Chapter 25 on Pre-operative Medical Evaluation 711
Oxford Textbook of Surgery (2nd Ed.) 710
Sabiston Textbook of Surgery (17th Ed.),
pp. 2255-2256 ..... 707, 712
Schwartz's Manual of Surgery (8th Ed.), pp. 246-147 711
The Bantam Medical Dictionary, 5th ed., p. 192) 703-704, 710
Winfield and Jolowicz, On Tort (15th ed.), p. 181 710