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REPORTS OF CASES

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OF THE

PHILIPPINES

FROM

DECEMBER 10, 2008 TO DECEMBER 17, 2008

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MANILA
2013

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by

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-06-2152. December 10, 2008]
(Formerly OCA IPI No. 04-1944-P)

EMILY G. CRUZ, *complainant, vs.* **PABLO F. FERNANDO, Utility Worker, MTC, Santa Rita, Pampanga,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONY; CASE AT BAR. — It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in the light of positive declarations. In this case, there was positive testimony by complainant's husband that he came upon both complainant and respondent in the restroom together in the morning of 6 March 2004 under atypical circumstances, which respondent was unable to explain to the satisfaction of this Court.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; MISBEHAVIOR WITHIN THE VICINITY OF COURT, ABHORRED. — Engaging in shady and unsavory acts within court premises, even if conducted only in the restroom, diminishes the sanctity and dignity of the court. As courts are temples of justice, their dignity and sanctity must

at all times be preserved and enhanced. Moreover, courts are looked upon by the people with high respect and are regarded as sacred places, where litigants are heard, rights and conflicts settled and justice solemnly dispensed. Misbehavior within and around their vicinity diminishes their sanctity and dignity. Court personnel, from the lowliest employee to the clerk of court or any position lower than that of a judge or justice, are involved in the dispensation of justice, and parties seeking redress from the courts for grievances look upon them as part of the judiciary. They serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the judiciary and the people's confidence in it. Thus, any conduct which tends to diminish the image of the judiciary cannot be countenanced.

3. ID.; ID.; ID.; REQUIRED PROPER DECORUM; MORAL UPRIGHTNESS AND RIGHTEOUSNESS, EMPHASIZED. — Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct or behavior is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals.

4. ID.; ID.; SIMPLE MISCONDUCT; PROPER PENALTY IN CASE AT BAR. — Pursuant to Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service Commission, simple misconduct is considered as a less grave offense and punishable by suspension from one month and one day to six months for the first offense, and dismissal for the second offense. In determining the fitting penalty for respondent, the Court considers that this is respondent's first administrative charge after 24 years of government service. It also notes that the criminal complaint for rape filed by complainant against respondent, was dismissed for lack of

probable cause. Finally, records show that respondent already filed his application for separation benefits under Republic Act No. 8291, but the same has not been acted upon because of the instant case. As recommended by the OCA, the Court shall impose a fine in an amount equivalent to his salary for two months, to be deducted from his separation benefits.

APPEARANCES OF COUNSEL

Restituto M. David for complainant.
Romeo B. Torno for respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.:*

The instant administrative complaint[1] was filed before this Court by Emily G. Cruz (complainant) against Pablo F. Fernando (respondent), Utility Worker of the Municipal Trial Court (MTC), Santa Rita, Pampanga, charging the latter with Grave Misconduct, and Conduct Unbecoming of a Public Officer.

Complainant alleged that she is the owner of a *carinderia* near the MTC catering to the employees of said court. On 6 March 2004, sometime between 10:00 and 11:00 o'clock in the morning, she went to the restroom located within the MTC premises. While complainant was answering the call of nature, respondent forcibly entered the restroom and sexually abused her despite her protestation. After complainant's rape, her own husband was about to enter the same restroom to urinate, and he heard her crying. Upon entering the restroom, complainant's husband saw her in the act of putting on her underwear and respondent washing his private parts.

The Court required respondent to comment on the administrative complaint against him.[2]

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

[2] *Id.* at 7.

In his Counter-Affidavit,[3] respondent vehemently denied that he sexually abused complainant. He claimed that on 6 March 2004, a Saturday, he and co-employee Armando Salonga (Salonga) were on duty at the MTC. At around 10:00 a.m., Salonga went out to look for a rubber bushing for the lavatory faucet of the court. When respondent was alone, he went to the restroom to urinate. While he was answering the call of nature, complainant suddenly entered the restroom and started embracing him. But before he could extricate himself from the complainant's embrace, her husband arrived. It was then that complainant told lies to her husband that she had been sexually abused by respondent. Complainant and her husband left at 11:00 o'clock but went back to talk to him, and they parted ways peacefully.

Respondent pointed out that if it were true that he forcibly had sex with complainant, the latter should have reported the same to the police station, which is very near the MTC building. She also did not submit a medical certificate on the physical signs resulting from the supposed sexual assault. Respondent also contended that the alleged rape could not have taken place inside the restroom considering its size (being small and cramped) and location (it is near the entrance to the MTC and accessible to the public). At the time of the alleged rape, there were even several carpenters working in a building immediately adjacent to the MTC who could have easily come to complainant's rescue as the entrance door to the MTC was open. Thus, assuming for the sake of argument that he had sexual intercourse with the complainant, respondent averred that it could not have been consummated without the full cooperation of the complainant.

To support his defense, respondent submitted his Counter-Affidavit in I.S. No. 04-C-658[4] (the criminal complaint for rape instituted by complainant against him before the Office of the Provincial Prosecutor, City of San Fernando, Pampanga); sketches of the restroom; and a Certification dated 22 March

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

[4] *Id*. at 53.

2004 issued by the PNP attesting that per Police Blotter, no case of rape had been reported from 1 March 2004 up to the time the said certification was issued.

It was then complainant's turn to submit her Reply-Affidavit,[5] where she argued that she could not have consented to a sexual intercourse with respondent knowing fully well that at the time of the incident, her husband was just nearby at their *carinderia*. Although she admitted that she did not immediately report the rape to the police, she explained that being a woman, she initially preferred to keep what happened to her within the family circle. Complainant specifically denied that she and her husband conversed with respondent on 6 March 2004 after the incident.

On 27 March 2006, the Court referred[6] the complaint to Presiding Judge Gemma Theresa B. Hilario-Logronio (Judge Logronio) of MTC, Sta. Rita, Pampanga, for investigation, report, and recommendation.

After the hearing, Judge Logronio submitted her "Recommendation" dated 14 June 2007. According to Judge Logronio, there were inconsistencies in the allegations of both complainant and respondent, and it was difficult to determine who was telling the truth. Scrutinizing the claims of both parties, Judge Logronio summarized her factual findings as follows:

> Complainant claimed that she was sexually abused by the respondent while respondent alleged that it was the complainant who followed him in the comfort room and embraced him. However, from the testimony of Nestor Cruz, the investigating judge found it unbelievable that after he found his wife inside the comfort room crying while being embraced by the respondent, he did not rescue his wife and instead left her alone. The natural reaction in this situation is to remove his wife from the place and away from the abuses of the respondent.
>
> It was also established that when Nestor Cruz decided to come back, he found respondent washing his organ. This is also unreal for

[5] *Id*. at 15-16.

[6] *Id*. at 31.

the respondent to have the nerve to wash his organ knowing that he was caught by the victim's husband sexually abusing his wife. On the other hand, the denial of the respondent that it was complainant who embraced him cannot also be given credence because of his obvious inconsistencies in his testimonies.

The accusation that respondent sexually abused the complainant was not proven. However, respondent is not innocent of any misconduct as he was not able to present evidence to disprove that complainant and respondent were found engaging in sexual conduct inside the comfort room of the MTC Sta. Rita Pampanga while respondent was on a Saturday duty.[7] (Emphasis ours.)

In the end, Judge Logronio recommended respondent's suspension for six months:

Considering that the respondent's misconduct has no direct relation to and connected with the performance of official duties as utility worker and that there is no element of corruption and willful intent to violate the law and taking into account his twenty four years in government service, the herein investigating judge recommends that respondent Pablo Fernando be adjudged guilty of SIMPLE MISCONDUCT. As this is his first offense, it is further recommended that he be suspended for a period of six months.[8]

The Court, in its 23 July 2007 Resolution, referred[9] the report and recommendation of Judge Logronio to the Office of the Court Administrator (OCA) for its evaluation, report, and recommendation.

On 16 November 2007, the OCA submitted its Report,[10] recommending that respondent be fined in an amount equivalent to his two months salary:

Premises considered, it is respectfully recommended that respondent Pablo F. Fernando, Utility Worker, MTC, Sta. Rita,

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[7] *Id*. at 88.

[8] *Id*.

[9] *Id*. at 370.

[10] *Id*. at 371-374.

Pampanga be found guilty of simple misconduct and be fined an amount equivalent to his two (2) months basic salary to be deducted from his separation benefits.[11]

Both complainant[12] and respondent[13] manifested that they were submitting the case for resolution based on the pleadings filed. Resultantly, the case was submitted for decision based on the pleadings on record.

After a thorough study of the present administrative case, the Court agrees in the findings of the OCA.

In his defense, respondent merely denied that he sexually abused complainant, and alleged that it was complainant who followed him to the restroom and embraced him.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in the light of positive declarations.[14] In this case, there was positive testimony by complainant's husband that he came upon both complainant and respondent in the restroom together in the morning of 6 March 2004 under atypical circumstances, which respondent was unable to explain to the satisfaction of this Court.

While there is no direct evidence to suggest that respondent raped or sexually abused the complainant, the Court, however, cannot entirely rule that nothing inappropriate occurred between complainant and respondent on 6 March 2004, considering the circumstances under which they were found together inside the MTC restroom, as well as their inconsistent or, at times, even illogical assertions.

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[11] *Id.* at 374.

[12] *Id.* at 391-393.

[13] *Id.* at 385-386.

[14] *Jugueta v. Estacio*, 486 Phil. 206, 213 (2004).

It cannot be denied that respondent, a court utility worker on duty on a Saturday, was found in the MTC restroom with a woman, not his wife, who is, herself, also married. These circumstances give rise to a reasonable suspicion that something indecent took place inside the restroom between two consenting individuals, for which reason the Court cannot completely absolve respondent from any administrative culpability.

Engaging in shady and unsavory acts within court premises, even if conducted only in the restroom, diminishes the sanctity and dignity of the court. As courts are temples of justice, their dignity and sanctity must at all times be preserved and enhanced.[15] Moreover, courts are looked upon by the people with high respect and are regarded as sacred places, where litigants are heard, rights and conflicts settled and justice solemnly dispensed. Misbehavior within and around their vicinity diminishes their sanctity and dignity.[16]

Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary.[17] That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct or behavior is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals.[18]

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[15] *Re: Habitual Tardiness of Mario J. Tamang, Sheriff IV, Regional Trial Court, Branch 168, Pasig City*, A.M. No. P-04-1861, 31 August 2004, 437 SCRA 229, 231.

[16] *Merilo-Bedural v. Edroso*, 396 Phil. 756, 763 (2000); *Judge Alumbres v. Judge Caoibes*, 425 Phil. 55, 64 (2002).

[17] *Rabe v. Flores*, 338 Phil. 919, 925-926 (1997).

[18] *Acebedo v. Arquero*, 447 Phil. 76, 85 (2003).

Court personnel, from the lowliest employee to the clerk of court or any position lower than that of a judge or justice, are involved in the dispensation of justice, and parties seeking redress from the courts for grievances look upon them as part of the judiciary. They serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the judiciary and the people's confidence in it. Thus, any conduct which tends to diminish the image of the judiciary cannot be countenanced.[19]

It is without any doubt that respondent's actuations fell short of the general standards for a public servant, more so, of the exacting standards for an employee of the court. For his inappropriate behavior on 6 March 2004, respondent is guilty of simple misconduct.

Pursuant to Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service Commission, simple misconduct is considered as a less grave offense and punishable by suspension from one month and one day to six months for the first offense, and dismissal for the second offense.

In determining the fitting penalty for respondent, the Court considers that this is respondent's first administrative charge after 24 years of government service. It also notes that I.S. No. 04-C-658, the criminal complaint for rape filed by complainant against respondent, was dismissed for lack of probable cause by the Pampanga Provincial Prosecutor in its Resolution dated 4 July 2005. Finally, records show that respondent already filed his application for separation benefits under Republic Act No. 8291 effective 1 March 2006, but the same has not been acted upon because of the instant case. As recommended by the OCA, the Court shall impose a fine in an amount equivalent to his salary for two months, to be deducted from his separation benefits.

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[19] *Vidallon-Magtolis v. Salud*, A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 470 citing the Code of Conduct for Court Personnel, A.M. No. 03-06-13-SC, 1 June 2004.

WHEREFORE, the Court finds respondent Pablo F. Fernando liable for *SIMPLE MISCONDUCT*, and imposes upon him a *FINE* equivalent to his two (2) months salary to be deducted from his separation benefits.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 124795. December 10, 2008]

FORFOM DEVELOPMENT CORPORATION, *petitioner, vs.* **PHILIPPINE NATIONAL RAILWAYS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; ELUCIDATED. — The power of eminent domain is an inherent and indispensable power of the State. Being inherent, the power need not be specifically conferred on the government by the Constitution. Section 9, Article III states that private property shall not be taken for public use without just compensation. The constitutional restraints are public use and just compensation. The fundamental power of eminent domain is exercised by the Legislature. It may be delegated by Congress to the local governments, other public entities and public utilities. In the case at bar, PNR, under its charter, has the power of expropriation.

2. ID.; ID.; ID.; ELEMENTS; ALL PRESENT IN CASE AT BAR. — A number of circumstances must be present in the taking of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period;

(3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. In the case at bar, the expropriator (PNR) entered the property of Forfom, a private land. The entrance into Forfom's property was permanent, not for a fleeting or brief period. PNR has been in control, possession and enjoyment of the subject land since December 1972 or January 1973. PNR's entry into the property of Forfom was with the approval of then President Marcos and with the authorization of the PNR's Board of Directors. The property of Forfom measuring around eleven hectares was devoted to public use – railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service. With the entrance of PNR into the property, Forfom was deprived of material and beneficial use and enjoyment of the property. It is clear from the foregoing that there was a taking of property within the constitutional sense.

3. ID.; ID.; ID.; EXPROPRIATION PROCEEDINGS; WAIVED IN CASE AT BAR; NO RIGHT TO RECOVER PROPERTY, ONLY RIGHT TO COMPENSATION REMAINS. — Forfom argues that the property taken from it should be returned because there was neither expropriation case filed by PNR nor just compensation paid for the same. It can be gathered from the records that Forfom accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. Forfom's inaction for almost eighteen (18) years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner shall be paid for its land preclude it from questioning the PNR's power to expropirate or the public purpose for which the power was exercised. In other words, it has waived its right and is estopped from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR. Recovery of possession of the property by the landowner can no longer be allowed on the grounds of estoppel and, more importantly, of public policy which imposes upon the public utility the obligation to continue its services to the public. The non-filing of the case for expropriation will not necessarily lead

to the return of the property to the landowner. What is left to the landowner is the right of compensation.

4. ID.; ID.; ID.; JUST COMPENSATION; NON-PAYMENT THEREOF WILL NOT RESULT TO RETURN OF PROPERTY; NO DENIAL OF DUE PROCESS AS THE SAME IS BEING HEARD IN COURT. — Forfom argues that the recovery of its property is justified because PNR failed to pay just compensation from the time its property was taken. We do not agree. It is settled that non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot. Forfom claims it was denied due process when its property was forcibly taken without due compensation for it. Forfom is not being denied due process. It has been given its day in court. The fact that its cause is being heard by this Court is evidence that it is not being denied due process.

5. ID.; ID.; ID.; THAT PROPERTY SUBJECT OF EXPROPRIATION BEING LEASED TO THIRD PARTIES IN CASE AT BAR; NOT MATERIAL TO THE ISSUE OF JUST COMPENSATION. — Forfom contends that since there is enormous proof that portions of the property taken by PNR were being leased to third parties there was enough justification for the Court of Appeals to order the return to petitioner of the leased portions as well as the rents received therefrom. We find such contention to be untenable. Forfom's inaction on and acquiescence to the taking of its land without any expropriation case being filed, and its continued negotiation with PNR on just compensation for the land, prevent him from raising any issues regarding the power and right of the PNR to expropriate and the public purpose for which the right was exercised. The only issue that remains is just compensation. Having no right to further question PNR's act of taking over and the corresponding public purpose of the condemnation, Forfom cannot now object to PNR's lease of portions of the land to third parties. The leasing out of portions of the property is already a matter between PNR and third persons in which Forfom can no longer participate. The same no longer has any bearing on the issue of just compensation.

6. ID.; ID.; ID.; ID.; ON THE SCOPE OF PUBLIC USE. — Forfom further avers that the leasing out of portions of the property

to third persons is beyond the scope of public use and thus should be returned to it. We do not agree. The public-use requisite for the valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. At present, it may not be amiss to state that whatever is beneficially employed for the general welfare satisfies the requirement of public use. The term "public use" has now been held to be synonymous with "public interest," "public benefit." "public welfare," and "public convenience." It includes the broader notion of indirect public benefit or advantage. Whatever may be beneficially employed for the general welfare satisfies the requirement of public use. In the instant case, Mrs. Ramos of the PNR explains that the leasing of PNR's right of way is an incidental power and is in response to the government's social housing project. She said that to prevent the proliferation of squatting along the right of way, special contracts were entered into with selected parties under strict conditions to vacate the property leased upon notice. To the court, such purpose is indeed public, for it addresses the shortage in housing, which is a matter of concern for the state, as it directly affects public health, safety, environment and the general welfare.

7. ID.; ID.; ID.; ASCERTAINMENT OF COMPENSATION; ELUCIDATED. — Under Section 5 of the 1997 Rules of Civil Procedure, the court shall appoint not more than three competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property. Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."

8. ID.; ID.; ID.; JUST COMPENSATION; VALUE OF PROPERTY FIXED AT THE TIME OF TAKING IN CASE AT BAR. —

The next issue to be resolved is the time when just compensation should be fixed. Is it at the time of the taking or, as Forfom maintains, at the time when the price is actually paid? Where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, the Court has invariably ruled that it is the value of the property at the time of taking that is controlling for purposes of compensation. In the case at bar, the just compensation should be reckoned from the time of taking which is January 1973. The determination thereof shall be made in the expropriation case to be filed without delay by the PNR after the appointment of commissioners as required by the rules.

9. ID.; ID.; ID.; ID.; PROPER LEGAL INTEREST AND OTHER DAMAGES IN CASE AT BAR. — Admittedly, the PNR's occupation of Forfom's property for almost eighteen (18) years entitles the latter to payment of interest at the legal rate of six (6%) on the value of the land at the time of taking until full payjeht is made by the PNR. For almost 18 years, the PNR has enjoyed possession of the land in question without the benefit of expropriation proceedings. It is apparent from its actuations that it has no intention of filing any expropriation case in order to formally place the subject land in its name. All these years, it has given Forfom the runaround, failing to pay the just compensation it rightly deserves. PNR's uncaring and indifferent posture must be corrected with the awarding of exemplary damages, attorney's fees and expenses of litigation. However, since Forfom no longer appealed the deletion by both lower courts of said prayer for exemplary damages, the same cannot be granted. As to attorney's fees and expenses of litigation, we find the award thereof to be just and equitable. The amounts of ₱100,000.00 as attorney's fees and ₱50,000.00 as litigation expenses are reasonable under the premises. As explained above, the prayer for the return of the leased portions, together with the rental received therefrom, is denied. Unearned income for years after the takeover of the land is likewise denied. Having turned over the property to PNR, Forfom has no more right to receive any income, if there be any, derived from the use of the property which is already under the control and possession of PNR. As to actual damages corresponding to the sugarcane and mango trees that were allegedly destroyed

when PNR entered and took possession of the subject land, we find that the same, being a question of fact, is better left to be determined by the expropriation court where the PNR will be filing the expropriation case. Evidence for such claim may be introduced before the condemnation proceedings.

APPEARANCES OF COUNSEL

Loyola and Associates for petitioner.
Legal Department (PNR) for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Decision[1] of the Court of Appeals dated 24 April 1996.

Petitioner Forfom Development Corporation (Forfom) is a domestic corporation duly organized and existing under the laws of the Philippines with principal office at Cabuyao, Laguna, while respondent Philippine National Railways (PNR) is a government corporation engaged in proprietary functions with principal office at the PNR Railway Station, C.M. Recto Avenue, Tutuban, Binondo, Manila.

The facts, stripped of the non-essentials, are as follows:

Forfom is the registered owner of several parcels of land in San Vicente, San Pedro, Laguna under Transfer Certificates of Title (TCT) Nos. T-34384, T-34386 and 34387, all of the Registry of Deeds of Laguna. Said parcels of land were originally registered in the name of Felix Limcaoco, predecessor-in-interest of Forfom, under Original Certificates of Title (OCT) Nos. (0-326) 0-384 and (0-328) 0-386.

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[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices Alfredo L. Benipayo and Buenaventura J. Guerrero, concurring; CA *rollo*, pp. 164-173.

In a cabinet meeting held on 1 November 1972, then President Ferdinand E. Marcos approved the Presidential Commuter Service Project, more commonly known as the Carmona Project of the President. Per Resolution No. 751 dated 2 November 1972 of the PNR Board of Directors, its General Manager was authorized to implement the project. The San Pedro-Carmona Commuter Line Project was implemented with the installation of railroad facilities and appurtenances.

During the construction of said commuter line, several properties owned by private individuals/corporations were traversed as right-of-way. Among the properties through which the commuter line passed was a 100,128 square-meter portion owned by Forfom covered by TCT Nos. T-34384, T-34386 and T-34387.

On 24 August 1990, Forfom filed before the Regional Trial Court (RTC) of Binan, Laguna a complaint[2] for Recovery of Posssession of Real Property and/or Damages. It alleged that PNR, with the aid of military men, and without its consent and against its will, occupied 100,128 square meters of its property located in San Pedro, Laguna and installed thereon railroad and railway facilities and appurtenances. It further alleged that PNR rented out portions of the property to squatters along the railroad tracks. Despite repeated verbal and written demands for the return of the property or for the payment of its price, PNR failed to comply. It prayed that PNR be ordered to vacate the property and to cause the eviction of all shanties and squatters that PNR had taken in as lessees, and that it be restored to the peaceful occupation and enjoyment thereof. It likewise asked that Forfom be ordered to pay (a) ₱1,000.00 per month per hectare from occupation of the property until the same is vacated as rentals plus interest at 24% per annum; (b) ₱1,600,000.00 as unrealized income from occupation of the property up to the present plus 12% interest per annum until fully paid; (c) ₱150,000.00 for actual damages on account of the destruction of crops and improvements on the property when the

[2] Raffled to Branch 24.

occupation of the property commenced plus 12% interest per annum until fully paid; (d) at least ₱100,000.00 as exemplary damages; (e) ₱100,000.00 plus 15% of the amount and properties to be recovered as attorney's fees; and (f) costs of the suit.[3]

In its Amended Answer,[4] PNR alleged that, per authority granted by law (Presidential Decree No. 741), it acquired parcels of land used in the construction of the railway track to Carmona, Cavite. It, however, denied that the property acquired from Forfom was leased to tenants. It likewise denied that the acquisition of Forfom's property was made without the consent of Dr. Felix Limcaoco, the former owner of the property. It stressed that the acquisition of the properties used in the project was done through negotiations with the respective owners. It asserted that no crop was damaged when it acquired the property subject of the case. Further, it denied liability for unrealized income, exemplary damages and attorney's fees.

PNR explained that former President Ferdinand E. Marcos approved what was known to be the Carmona Project — a 5.1 kilometer railroad extension line from San Pedro, Laguna to San Jose, Carmona, Cavite to serve the squatters' resettlement area in said localities. It claimed that it negotiated with the respective owners of the affected properties and that they were paid just compensation. Dr. Felix Limcaoco, it said, was not paid because he failed to present the corresponding titles to his properties. It claimed that the right to and just compensation for the subject property was the declared fair market value at the time of the taking which was ₱0.60 per square meter. It disclosed that in a meeting with the representatives of Dr. Limcaoco, the price agreed upon was ₱1.25 per square meter, the amount the adjoining owners was paid. It prayed that the instant complaint be dismissed, and that the owner of the properties involved be compelled to accept the amount of ₱1.25 per square meter as price for the properties.

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[3] Records, pp. 1-6.

[4] *Id.* at 77-80.

In an Order dated 29 October 1990, the pre-trial conference on the case was set.[5] On 13 March 1991, for failure of the parties to reach any agreement, pre-trial was terminated and trial of the case scheduled.[6] Thereafter, trial on the merits ensued.

The following witnesses testified for Forfom: (1) Leon Capati; (2) Marites Dimaculangan; (3) Marilene L. de Guzman; (4) Gavino Rosas de Claro; and (5) Jose Elazegui.

Mr. Leon Capati,[7] employee of Forfom, testified that he knew Dr. Felix Limcaoco, Sr. because he worked for him since 1951 until his death. He knew Forfom Development Corporation to be a corporation formed by the children of Dr. Limcaoco and owner of the properties left behind by said doctor. He said he worked as overseer in Hacienda Limcaoco in San Pedro, Laguna owned by Dr. Limcaoco. Said *hacienda* was converted to the Olympia Complex Subdivision now owned by Forfom. Being a worker of Forfom, he disclosed that in 1972, the PNR forcibly took portions of the property of Forfom. Armed men installed railroads and even used bulldozers which caused the destruction of around eleven hectares of sugar land. Since 1972, he said PNR used the property for its benefit and even leased part of it to people living near the railroad. At that time, he claimed that the value of sugarcane was ₱200.00 per *piko* and that the plantation harvested sixty (60) tons annually worth ₱224,000.00. In all, from 1972 to 1985, he claimed Forfom lost ₱2,917,200.00 in ruined sugar, unrealized harvest, excluding unrealized harvest for nine mango trees which yielded 60 *kaings* per tree per harvest.

Ms. Marites Dimaculangan,[8] an officer of Forfom, corroborated the testimony of Mr. Leon Capati. She presented documents[9] showing that Hacienda Limcaoco was previously owned by Dr. Felix Limcaoco, then the ownership was transferred to Forfom.

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[5] *Id.* at 38.

[6] *Id.* at 90.

[7] *Id.* at 507-510.

[8] *Id.* at 125-129.

[9] *Id.* at 137-149.

As proof that Hacienda Limcaoco was converted into a low-cost housing subdivision known as the Olympia Complex Subdivision, she presented permits from the Human Settlements Regulatory Commission and from the Municipality of San Pedro.[10] She also adduced in evidence several letters11 allegedly showing that PNR occupied the property owned by the Limcaocos. As a result, around eleven hectares of the sugar cane plantation were destroyed.[12] From 1972 to 1985, she claimed that part of the property taken by PNR was leased to squatters beside the railroad tracks. She added that Forfom incurred a loss totaling ₱2,917,200.00. She claimed that the current price of land contiguous to the parcels taken by PNR was ₱1,000.00 per square meter.

Ms. Marilene L. De Guzman,[13] Executive Vice-President of Forfom and daughter of the Late Dr. Felix Limcaoco, corroborated the testimonies of Mr. Capati and Ms. Dimaculangan. She disclosed that his father died on 25 March 1973. She learned from her father and from Mr. Leon Capati that when the armed men took a portion of their property, the armed men did not show any court order or authority from any agency of the government. The armed men used bulldozers destroying 11 hectares of sugarcane and some mango trees. She said those taken over were used as railroad tracks and a portion beside the tracks were being leased to squatters. She revealed that the present fair market value of land at Olympia Complex is ₱1,400.00 per square meter.[14] If the land is not developed, same can be sold for ₱800.00 per square meter. She said from the time their property was taken over by PNR, her family has been writing to PNR regarding compensation for their land.[15]

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[10] *Id.* at 204-207.

[11] *Id.* at 150-177.

[12] *Id.* at 178-203.

[13] *Id.* at 340-344.

[14] *Id.* at 599-612.

[15] *Id.* at 532-549.

Ms. De Guzman said the property was still in the name of Dr. Felix Limcaoco, Sr. and Mrs. Olympia Limcaoco when the PNR took over a portion of their properties. She said she was not informed by Mr. Capati that the PNR took the said property over pursuant to a Presidential Mandate in order to provide transportation for relocated squatters. She explained that her father and Mr. Capati were not advised to harvest their crops and were surprised by the taking over of the land.

Mr. Gavino Rosas de Claro,[16] Land Register Examiner of the Register of Deeds of Calamba, Laguna, testified as representative of the Register of Deeds. He brought in Court the originals of TCT Nos. T-34384[17] and T-34386,[18] both in the name of Forfom Development Corporation and OCT Nos. (O-326) O-384[19] and (O-328) O-386, both in the name of Dr. Felix Limcaoco, Sr.[20] Thereafter, photocopies thereof were compared with the originals which were found to be faithful reproductions of the same.

Jose Elazegui,[21] Supervisor, Southern Tagalog Facoma, Inc. was presented to show the production of sugar and molasses on the property of Forfom. He presented duplicate original copies of *Tuos ng inaning Tubo* for the years 1984-1985, 1985-1986, 1986-1987 and 1987-1988.[22] The documents showed the production (average yield per area per picul) in other properties owned by Forfom other than the properties subject matter of this case.

For the defendant, Mrs. Edna Ramos, Department Manager of the Real Estate Department of the PNR, took the stand.[23]

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[16] TSN, 2 October 1991, pp. 2-17.

[17] Records, pp. 513-514.

[18] *Id.* at 517-518.

[19] *Id.* at 515-516.

[20] *Id.* at 519-520.

[21] TSN, 2 October 1991, pp. 18-34.

[22] Records, pp. 591-594.

[23] *Id.* at 709-712.

She testified that she was familiar with the acquisition by the PNR of the right of way for the San Pedro-Carmona Commuter Line. It was acquired and established by Presidential Mandate and pursuant to the authority of the PNR to expropriate under its charter (Presidential Decree No. 741).[24] She explained that President Ferdinand E. Marcos authorized the PNR to acquire said right of way in a Cabinet Meeting on 1 November 1972 as evidenced by an excerpt of the minutes of the meeting of the PNR Board of Directors on Resolution No. 751.[25] The right of way was acquired to provide a cheap, efficient and safe means of transportation to the squatters who were relocated in Cavite. The commuter line, she said, was primarily for service rather than profit. As shown by the letter[26] dated 30 April 1974 of Nicanor T. Jimenez, former General Manager of the PNR, to Mrs. Olympia Hemedes Vda. de Limcaoco, the acquisition of the right of way was with the knowledge and consent of Dr. Felix Limcaoco, Sr.

Mrs. Ramos disclosed that the total area acquired by the PNR for the San Pedro-Carmona Commuter Line was 15.7446 hectares or sixteen (16) lots in all owned by seven (7) private landowners and three (3) corporations. Among the private landowners were Isabel Oliver, Leoncia Blanco, Catalina Sanchez, Tomas Oliver, Alejandro Oliver and Antonio Sibulo. Per record of PNR, they were paid ₱1.25 per square meter for their lands. They executed Absolute Deeds of Sale in favor of the PNR, as a result of which, titles to the lands were transferred to PNR.[27] The remaining 9 lots belonging to the three private corporations — Forfom Development Corporation, Alviar Development Manufacturing & Trading Supply Corp. and Life Realty Development Corporation — were not paid for because these corporations were not able to present their respective titles, which had been used as loan collaterals in the Philippine National

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[24] *Id.* at 681-691.

[25] *Id.* at 692-693.

[26] *Id.* at 696.

[27] *Id.* at 699-703.

Bank and the Government Service Insurance System.[28] The unit price per square meter, which the negotiating panel of the PNR and the representatives of the three corporations was considering then, was ₱1.25. In a letter dated 3 October 1975, Mr. Felix Limcaoco, Jr. of Forfom was asking for ₱12.00 per square meter for their land and ₱150,000.00 for damaged sugar crops and mango trees.[29] She likewise said she had the minutes of the conference between Mr. Limcaoco and the PNR Chief Construction Engineer held at the PNR General Manager's Office on 24 July 1979.[30]

Mrs. Ramos clarified that as a matter of policy, PNR employees and other persons were not allowed to settle on the PNR's right of way. Squatting along the right of way had never been encouraged. To prevent its proliferation, special contracts were entered into with selected parties under strict conditions to vacate the property leased upon notice. She explained that the leasing of PNR's right of way was an incidental power and was in response to the government's social housing project.

In its decision dated 29 October 1992, the trial court ruled generally in favor of plaintiff, the dispositive portion reading:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendant ordering the latter to pay the former the following:
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> 1. Just compensation of the subject real properties consisting of 100,128 square meters and covered by TCT Nos. T-34387, T-34384 and T-34386 at ₱10.00 per square meter, with legal interest from the time of actual taking of plaintiff's real properties until payment is made by the defendant;
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> 2. The amount of ₱4,480,000.00 as unearned income of plaintiff from 1972 up to the current year, and thereafter, the amount of ₱224,000 yearly, with legal interest until payment is made;

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[28] *Id.* at 704-705.

[29] *Id.* at 706-707.

[30] *Id.* at 708.

3. Actual damages in the amount of ₱150,000 corresponding to sugarcane crops and mango trees destroyed or damaged as a result of the unlawful taking of plaintiff's real properties, with legal interest until payment is made;

4. The amount of ₱100,000 as and for attorney's fees;

5. The amount of ₱150,000 for litigation expenses plus the costs of this suit.

Plaintiff's claim for recovery of possession and the other prayers in the complaint are hereby dismissed for want of merit.[31]

The trial court found that the properties of Forfom were taken by PNR without due process of law and without just compensation. Although the power of eminent domain was not exercised in accordance with law, and PNR occupied petitioner's properties without previous condemnation proceedings and payment of just compensation, the RTC ruled that, by its acquiescence, Forfom was estopped from recovering the properties subject of this case. As to its right to compensation and damages, it said that the same could not be denied. The trial court declared that ₱10.00 per square meter was the fair and equitable market value of the real properties at the time of the taking thereof.

Not contented with the decision, both parties appealed to the Court of Appeals by filing their respective Notices of Appeal.[32] PNR questioned the trial court's ruling fixing the just compensation at ₱10.00 per square meter and not the declared value of ₱0.60 per square meter or the fair market value of ₱1.25 paid to an adjacent owner. It likewise questioned the award of actual damages and unearned income to Forfom.

On 24 April 1996, the appellate court disposed of the case as follows:

WHEEFORE, the decision appealed from is hereby AFFIRMED insofar as (1) it denies plaintiff's claim for recovery of possession and (2) it awards just compensation at the rate of ₱10.00 per square meter which defendant must pay to plaintiff, but with legal rate of

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[31] *Id.* at 727.

[32] *Id.* at 728 and 730.

interest thereon hereby specifically fixed at six (6) percent per annum starting from January of 1973 until full payment is made. However, the appealed decision is MODIFIED in the sense that plaintiff's claim for damages is DENIED for lack of merit.

No pronouncement as to costs.[33]

Except for the deletion of the award of damages, attorney's fees and litigation expenses, the appellate court agreed the with trial court. We quote:

There is no dispute that defendant neither commenced an expropriation proceedings nor paid just compensation prior to its occupation and construction of railroad lines on the subject property. Nevertheless, plaintiff's prayer to recover the property cannot be granted. Immediately after the occupation, or within a reasonable time thereafter, there is no showing that the same was opposed or questioned by plaintiff or its representatives on the ground that defendant never filed an expropriation proceedings and that no just compensation was ever paid. Neither is there a showing that plaintiff sought to recover the property because the taking was done forcibly with the aid of armed men. Instead, and this is borne out by certain communications between the parties through their respective officers or representatives, what plaintiff actually did was to negotiate with defendant for the purpose of fixing the amount which the latter should pay as just compensation and, if there be any, damages. x x x.

x x x x x x x x x

Clearly, a continuing negotiation between the parties took place for the purpose only of fixing the amount of just compensation and not because plaintiff wanted to recover the subject property. Thus, the failure of defendant to first file an expropriation proceedings and pay just compensation is now beside the point. And even if the contention of plaintiff that defendant used force is true, the former can no longer complain at this time. What controls now is the fact that by its own act of negotiating with defendant for the payment of just compensation, plaintiff had in effect made representations that it acquiesced to the taking of its property by defendant. We therefore agree with the lower court that plaintiff, by its acquiescence, waived its right, and is thus estopped, from recovering the subject property or from challenging any supposed irregularity in its acquisition.

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[33] CA *rollo*, p. 172.

x x x x x x x x x

Plaintiff's right to recover just compensation, however, remains. On this matter, we agree with the ₱10.00 per square meter valuation fixed by the trial court x x x.

x x x x x x x x x

With the long delay in the payment of just compensation however, defendant should pay interest thereon at the legal rate of six (6) percent per annum from the time of occupation until payment is made. x x x.[34]

Still unsatisfied with the decision, Forfom filed the instant petition for review on *certiorari* raising the following issues:

A. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER CANNOT RECOVER POSSESSION OF ITS LAND DESPITE THE ADMISSION THAT IT WAS FORCIBLY TAKEN (DURING THE MARTIAL LAW ERA) WITHOUT ANY EXPROPRIATION PROCEEDING OR PAYMENT OF COMPENSATION SIMPLY BECAUSE PETITIONER DID NOT OPPOSE THE ARMED AND FORCIBLE TAKING THEREOF:

B. THE HONORABLE COURT OF APPEALS EMPLOYED DOUBLE STANDARD OF JUSTICE IN ADMITTING HEARSAY EVIDENCE OF PNR YET REJECTING THAT OF PETITIONER WHICH IS PROPERLY IDENTIFIED WITH ABUNDANT CROSS EXAMINATION CONDUCTED ON THE BASIS OF PETITIONER'S REJECTED EVIDENCE:

C. THE HONORABLE COURT OF APPEALS ERRED GRIEVOUSLY IN HOLDING THAT IN THIS ACTION "THE FAILURE OF DEFENDANT TO FIRST FILE AN EXPROPRIATION PROCEEDINGS AND PAY JUST COMPENSATION (FOR THE PROPERTY OF PETITIONER FORCIBLY TAKEN BY PRIVATE RESPONDENT) IS (NOW) BESIDE THE POINT."

D. THE HONORABLE COURT OF APPEALS ERRED IN AGREEING WITH THE RTC IN FIXING THE COMPENSATION FOR THE LAND FORCIBLY TAKEN BY PNR AT A RIDICULOUS, OUTRAGEOUS, AND ABSURD PRICE OF ₱10.00 PER SQUARE METER DESPITE THE EVIDENCE SHOWING THAT THE PRICE

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[34] *Id.* at 167-170.

OF LAND IN THE ADJACENT AND SURROUNDING AREAS IS MORE THAN ₱1,500.00 PER SQUARE METER:

E. THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE EVIDENCE ESTABLISHING THE RIGHT OF THE PETITIONER TO BE AWARDED ACTUAL OR COMPENSATORY DAMAGES, ATTORNEY'S FEES, AND UNREALIZED INCOME:

F. THE HONORABLE COURT OF APPEALS ERRED IN AND ABUSED ITS DISCRETION IN ADOPTING DOUBLE STANDARD IN ITS EVALUATION OF THE EVIDENCE AND IN ADMITTING PNR's PATENTLY HEARSAY EVIDENCE WHILE REJECTING PETITIONER'S RELEVANT — MATERIAL AND ADMISSIBLE EVIDENCE:

G. THE HONORABLE COURT OF APPEALS DEVIATED FROM ESTABLISHED JURISPRUDENCE IN UNJUSTIFIABLY IGNORING AND SETTING ASIDE THE FINDINGS OF FACTS OF THE TRIAL COURT THAT ARE IN FACT SUPPORTED BY ABUNDANT EVIDENCE:

H. THE HONORABLE COURT OF APPEALS APPARENTLY SUPPRESSED THE EVIDENCE THAT PRIVATE RESPONDENT PNR APART FROM FORCIBLY TAKING THE LAND OF PETITIONER WITH THE EMPLOYMENT OF ARMED MEN, RENTED OUT PORTIONS OF SAID LAND TO ITS TENANTS WHO PAID HEFTY RENTALS FOR THE USE OF THE SAME AS RESIDENTIAL LOTS (AND NOT FOR PUBLIC PURPOSES).[35]

On the other hand, PNR accepted the decision of the Court of Appeals and no longer appealed.

The primary question to be resolved is: Can petitioner Forfom recover possession of its property because respondent PNR failed to file any expropriation case and to pay just compensation?

The power of eminent domain is an inherent and indispensable power of the State. Being inherent, the power need not be specifically conferred on the government by the Constitution.[36] Section 9, Article III states that private property shall not be

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[35] *Rollo,* pp. 11-12.

[36] *Manapat v. Court of Appeals*, G.R. No. 110478, 15 October 2007, 536 SCRA 32, 47-48.

taken for public use without just compensation. The constitutional restraints are public use and just compensation.[37]

The fundamental power of eminent domain is exercised by the Legislature. It may be delegated by Congress to the local governments, other public entities and public utilities.[38] In the case at bar, PNR, under its charter,[39] has the power of expropriation.

A number of circumstances must be present in the taking of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[40]

In the case at bar, the expropriator (PNR) entered the property of Forfom, a private land. The entrance into Forfom's property was permanent, not for a fleeting or brief period. PNR has been in control, possession and enjoyment of the subject land since December 1972 or January 1973. PNR's entry into the property of Forfom was with the approval of then President Marcos and with the authorization of the PNR's Board of Directors. The property of Forfom measuring around eleven hectares was devoted to public use — railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service. With the entrance of PNR into the property, Forfom was deprived of material and beneficial use and enjoyment of the property.

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[37] *Reyes v. National Housing Authority*, 443 Phil. 603, 610 (2003).

[38] *National Power Corporation v. Court of Appeals*, 479 Phil. 850, 860 (2004).

[39] Republic Act No. 4156, as amended by Republic Act No. 6366 and Presidential Decree No. 741.

[40] *Heirs of Mateo Pidacan and Romana Eigo v. Air Transportation Office*, G.R. No. 162779, 15 June 2007, 524 SCRA 679, 686-687.

It is clear from the foregoing that there was a taking of property within the constitutional sense.

Forfom argues that the property taken from it should be returned because there was neither expropriation case filed by PNR nor just compensation paid for the same.

It can be gathered from the records that Forfom accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. Forfom's inaction for almost eighteen (18) years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner shall be paid for its land preclude it from questioning the PNR's power to expropriate or the public purpose for which the power was exercised. In other words, it has waived its right and is estopped from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR.

In *Manila Railroad Co. v. Paredes*,[41] the first case in this jurisdiction in which there was an attempt to compel a public service corporation, endowed with the power of eminent domain, to vacate the property it had occupied without first acquiring title thereto by amicable purchase or expropriation proceedings, we said:

> x x x whether the railroad company has the capacity to acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any. The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general. It will readily be seen that the interruption of the transportation

[41] 32 Phil. 534, 537-538 (1915).

service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction. The fact that the railroad company has the capacity to eventually acquire the land by expropriation proceedings undoubtedly assists in coming to the conclusion that the property owner has no right to the remedies of ejectment or injunction. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. x x x. But the real strength of the rule lies in the fact that it is against public policy to permit a property owner, under such circumstances, to interfere with the service rendered to the public by the railroad company. x x x. (I)f a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.

Further, in *De Ynchausti v. Manila Electric Railroad & Light Co.*,[42] we ruled:

The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such a case *there can only remain to the owner a right of compensation*.

x x x x x x x x x

One who permits a railroad company to occupy and use his land and construct its roads thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar

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[42] 36 Phil. 908, 911-912 (1917).

to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, of for injuries done him by the construction or operation of the road.

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We conclude that x x x the complaint in this action praying for possession and for damages for the alleged unlawful detention of the land in question, should be dismissed x x x but that such dismissal x x x should be without prejudice to the right of the plaintiff to institute the appropriate proceedings to recover the value of the lands actually taken, or to compel the railroad corporation to take the necessary steps to secure the condemnation of the land and to pay the amount of the compensation and damages assessed in the condemnation proceedings.

In *Ansaldo v. Tantuico, Jr.*,[43] a case involving the takeover by the Government of two private lots to be used for the widening of a road without the benefit of an action for expropriation or agreement with its owners, we held that the owners therein, having been silent for more than two decades, were deemed to have consented to such taking — although they knew that there had been no expropriation case commenced — and therefore had no reason to impugn the existence of the power to expropriate or the public purpose for which that power had been exercised. In said case, we directed the expropriator to forthwith institute the appropriate expropriation action over the land, so that just compensation due the owners may be determined in accordance with the Rules of Court.

From the afore-cited cases, it is clear that recovery of possession of the property by the landowner can no longer be allowed on the grounds of estoppel and, more importantly, of public policy which imposes upon the public utility the obligation to continue its services to the public. The non-filing of the case for expropriation will not necessarily lead to the return of the property to the landowner. What is left to the landowner is the right of compensation.

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[43] G.R. No. 50147, 3 August 1990, 188 SCRA 300.

Forfom argues that the recovery of its property is justified because PNR failed to pay just compensation from the time its property was taken. We do not agree. It is settled that non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot.[44]

Forfom contends that since there is enormous proof that portions of the property taken by PNR were being leased to third parties there was enough justification for the Court of Appeals to order the return to petitioner of the leased portions as well as the rents received therefrom.

We find such contention to be untenable. As ruled above, Forfom's inaction on and acquiescence to the taking of its land without any expropriation case being filed, and its continued negotiation with PNR on just compensation for the land, prevent him from raising any issues regarding the power and right of the PNR to expropriate and the public purpose for which the right was exercised. The only issue that remains is just compensation. Having no right to further question PNR's act of taking over and the corresponding public purpose of the condemnation, Forfom cannot now object to PNR's lease of portions of the land to third parties. The leasing out of portions of the property is already a matter between PNR and third persons in which Forfom can no longer participate. The same no longer has any bearing on the issue of just compensation.

Forfom further avers that the leasing out of portions of the property to third persons is beyond the scope of public use and thus should be returned to it. We do not agree. The public-use requisite for the valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. At present, it may not be amiss to state that whatever is beneficially employed for the general welfare satisfies the requirement of public use.[45] The term "public use" has now been held to be synonymous with "public interest," "public

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[44] *Reyes v. National Housing Authority, supra* note 37 at 613.

[45] *Manapat v. Court of Appeals*, G.R. No. 110478, 15 October 2007, 536 SCRA 32, 55.

benefit," "public welfare," and "public convenience."[46] It includes the broader notion of indirect public benefit or advantage.[47] Whatever may be beneficially employed for the general welfare satisfies the requirement of public use.[48]

In the instant case, Mrs. Ramos of the PNR explains that the leasing of PNR's right of way is an incidental power and is in response to the government's social housing project. She said that to prevent the proliferation of squatting along the right of way, special contracts were entered into with selected parties under strict conditions to vacate the property leased upon notice. To the court, such purpose is indeed public, for it addresses the shortage in housing, which is a matter of concern for the state, as it directly affects public health, safety, environment and the general welfare.

Forfom claims it was denied due process when its property was forcibly taken without due compensation for it. Forfom is not being denied due process. It has been given its day in court. The fact that its cause is being heard by this Court is evidence that it is not being denied due process.

We now go to the issue of just compensation.

Under Section 5 of the 1997 Rules of Civil Procedure, the court shall appoint not more than three competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property. Though the ascertainment of just compensation is a judicial prerogative,[49] the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation

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[46] *Reyes v. National Housing Authority*, *supra* note 37 at 610.

[47] *Didipio Earth-Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun*, G.R. No. 157882, 30 March 2006, 485 SCRA 586, 613.

[48] *Heirs of Juancho Ardona v. Hon. Reyes*, 210 Phil. 187, 203-204 (1983).

[49] *Export Processing Zone Authority v. Dulay*, G.R. No. L-59603, 29 April 1987, 149 SCRA 305, 311.

cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."[50]

In the case before us, the trial court determined just compensation, but not in an expropriation case. Moreover, there was no appointment of commissioners as mandated by the rules. The appointment of commissioners is one of the steps involved in expropriation proceedings. What the judge did in this case was contrary to what the rules prescribe. The judge should not have made a determination of just compensation without first having appointed the required commissioners who would initially ascertain and report the just compensation for the property involved. This being the case, we find the valuation made by the trial court to be ineffectual, not having been made in accordance with the procedure provided for by the rules.

The next issue to be resolved is the time when just compensation should be fixed. Is it at the time of the taking or, as Forfom maintains, at the time when the price is actually paid?

Where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, the Court has invariably ruled that it is the value of the property at the time of taking that is controlling for purposes of compensation.[51] In the case at bar, the just

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[50] *National Power Corp. v. dela Cruz*, G.R. No. 156093, 2 February 2007, 514 SCRA 56, 70.

[51] *Manila International Airport Authority v. Rodriguez*, G.R. No. 161836, 28 February 2006, 483 SCRA 619, 627.

compensation should be reckoned from the time of taking which is January 1973. The determination thereof shall be made in the expropriation case to be filed without delay by the PNR after the appointment of commissioners as required by the rules.

Admittedly, the PNR's occupation of Forfom's property for almost eighteen (18) years entitles the latter to payment of interest at the legal rate of six (6%) percent on the value of the land at the time of taking until full payment is made by the PNR.[52]

For almost 18 years, the PNR has enjoyed possession of the land in question without the benefit of expropriation proceedings. It is apparent from its actuations that it has no intention of filing any expropriation case in order to formally place the subject land in its name. All these years, it has given Forfom the runaround, failing to pay the just compensation it rightly deserves. PNR's uncaring and indifferent posture must be corrected with the awarding of exemplary damages, attorney's fees and expenses of litigation. However, since Forfom no longer appealed the deletion by both lower courts of said prayer for exemplary damages, the same cannot be granted. As to attorney's fees and expenses of litigation, we find the award thereof to be just and equitable. The amounts of ₱100,000.00 as attorney's fees and ₱50,000.00 as litigation expenses are reasonable under the premises.

As explained above, the prayer for the return of the leased portions, together with the rental received therefrom, is denied. Unearned income for years after the takeover of the land is likewise denied. Having turned over the property to PNR, Forfom has no more right to receive any income, if there be any, derived from the use of the property which is already under the control and possession of PNR.

As to actual damages corresponding to the sugarcane and mango trees that were allegedly destroyed when PNR entered and took possession of the subject land, we find that the same,

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[52] *National Power Corporation v. Angas*, G.R. Nos. 60225-26, 8 May 1992, 208 SCRA 542, 548-549; *Urtula v. Republic*, 130 Phil. 449, 454-455 (1968).

being a question of fact, is better left to be determined by the expropriation court where the PNR will be filing the expropriation case. Evidence for such claim may be introduced before the condemnation proceedings.[53]

WHEREFORE, the instant petition is *PARTIALLY DENIED* insofar as it denies Forfom Development Corporation's prayer for recovery of possession (in whole or in part) of the subject land, unearned income, and rentals. The petition is *PARTIALLY GRANTED* in that attorney's fees and litigation expenses in the amounts of ₱100,000.00 and ₱50,000.00, respectively, are awarded. The Philippine National Railways is *DIRECTED* to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to its owner may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made. As to the claim for the alleged damaged crops, evidence of the same, if any, may be presented before the expropriation court. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 136197. December 10, 2008]

NATIVIDAD BAUTISTA-BORJA, *petitioner, vs.* **ILUMINADA BAUTISTA, AUREA BAUTISTA-RUIZ, CLARITA BAUTISTA, FLORENTINO BAUTISTA, DIOSDADO BAUTISTA, FRANCISCO BAUTISTA II, FRANCISCO BAUTISTA III, DANILO BAUTISTA, LUZVIMINDA BAUTISTA, ARTURO BAUTISTA, LUZ BAUTISTA and PAULINO BAUTISTA,** *respondents.*

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[53] *Philippine Oil Development Co., Inc. v. Go*, 90 Phil. 692, 696 (1952).

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOID AND INEXISTENT CONTRACTS; DECLARATIONS OF NULLITY OF DEED OF SALE; IMPRESCRIPTIBLE. — From the allegations in petitioner's complaint, it is clear that her action is one for *declaration of the nullity of the Deeds of Sale* which she claims to be either *falsified* % because at the time of the execution thereof, Pablo was already gravely ill and bedridden, hence he could not have gone and appeared before the Notary Public, much less understood the significance and legal deeds % and/or because there was no consideration therefor. Clearly, following Article 1410 of the Civil Code, petitioner's action is imprescriptible.

2. ID.; ID.; ID.; ACTION FOR RECONVEYANCE BASED ON ALLEGED VOID CONTRACT; IMPRESCRIPTIBLE. — Even if petitioner's complaint were to be taken as one for reconveyance, given that it is based on an alleged void contract, it is just the same as imprescriptible. x x x x *Thus, if the trial court finds that the deed of sale is void, then the action for the declaration of the contract's nullity is imprescriptible. Indeed, the Court has held in a number of cases that an action for reconveyance of property based on a void contract does not prescribe. However, if the trial court finds that the deed of sale is merely voidable, then the action would have already prescribed."*

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; PRESCRIPTION; WHEN PROPER TO USE. — Since the complaint on its face does not indicate that the action has prescribed, *Pineda v. Heirs of Eliseo Guevara* instructs: *An allegation of prescription can effectively be used in a motion to dismiss only* when the complaint on its face *shows that indeed the action has already prescribed.* Otherwise, the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits and *cannot be determined in a mere motion to dismiss.*

APPEARANCES OF COUNSEL

Bernard P. Olalia and Benjamin V. Lalia for petitioner.
Cabucana Law Firm for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The spouses Pablo Bautista (Pablo) and Segundina Tadiaman Bautista (spouses Bautista) died intestate in July 1980 and April 1990, respectively. Pablo was the registered owner of several agricultural lands situated in Ramon, Isabela totaling around 30 hectares and in Llanera, Nueva Ecija totalling 17 hectares. They had five children, namely: respondents Iluminada and Aurea, Francisco (who died in 1981), Simplicio (who died in 1986), and Natividad (petitioner).

Francisco was survived by six children, namely: respondents Clarita, Florentino, Diosdado, Francisco II, and Francisco III, and the now deceased Arsenio, all surnamed Bautista.

Simplicio was survived by five children, namely: respondents Danilo, Lorna, Luzviminda, Luz, and Paulino, all surnamed Bautista.

By petitioner's claim, respondents, through fraud and deception, convinced her to take possession and cultivate the above-stated parcels of land which would eventually be partitioned; and that unknown to her, however, the titles to the lands were cancelled by virtue of Deeds of Sale purportedly executed on different dates by her parents in favor of her siblings Simplicio and Francisco, a fact which she came to know about only in 1994.

Petitioner thus filed on June 9, 1994 a complaint[1] before the Regional Trial Court (RTC) of Santiago City, Isabela, docketed as Civil Case No. 2084 for Annulment of the Deeds of Sale and/or Partition of Properties alleging, *inter alia*:

x x x x x x x x x

13. That the aforesaid deeds of sales are either forgeries or falsifications or are all fictitious documents, v[oi]d and ineffectual conferring no valid and legal right to the transferees for the reason that at the time of their alleged executions the vendors were almost

[1] Records, pp. 1-7.

totally bereft of understanding, reason and perception and especially in the case of Pablo Bautista, was so gravely ill, seriously bedridden that he could not have gone and appeared before the Notary Public for the execution of the questionable documents and/or could not have understood the significance and legal effect of the same;

14. That there was totally no consideration which passed between the defendants and the alleged vendors during and at the time of the execution of the several deeds of sales which were all done to prejudice and deprived the plaintiff of her lawful share in the inheritance of the properties left by their deceased parents; (Underscoring supplied)

x x x x x x x x x[2]

Petitioner accordingly prayed as follows:

1. Ordering the partition of the properties of spouses Pablo Bautista and Segundina Tadiaman Bautista;

2. Declaring as null and void and without any force and effect the deed of sales and/or other documents executed to cancel and effect the transfer of the properties of Pablo Bautista and his wife to the defendants;

x x x x x x x x x[3]
(Underscoring supplied)

By Order of September 27, 1994, Branch 35 of the Santiago RTC, acting on the Motion to Dismiss[4] filed by respondents which was anchored on lack of cause of action, prescription and laches, dismissed the complaint. It held that petitioner's complaint, though denominated as one for annulment of sale, was in fact based on an obligation conferred by law, specifically an implied trust, hence, pursuant to Articles 1456[5]

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[2] *Id.* at 4-5.

[3] *Id.* at 5.

[4] *Id.* at 18-23.

[5] Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered as a trustee of an implied trust for the benefit of the person from whom the property comes.

and 1144[6] of the Civil Code, it had prescribed, the same having been filed 20 years after the implied trust commenced.

In another vein, the trial court held that petitioner's cause of action had prescribed as actions for reconveyance based on implied trust prescribe in 10 years, and that laches had set in.

Petitioner elevated the case to the Court of Appeals, contending that the nature of her complaint was one for annulment of void contracts, hence, imprescriptible; that laches does not apply, following *Palmera v. Civil Service Commission*[7] which held that "x x x where a defendant or those claiming under him recognized or directly or impliedly acknowledged the existence of the right asserted by a plaintiff, such recognition may be invoked as a valid excuse for plaintiff's delay in seeking to enforce such right"; that, contrary to the trial court's ruling, her cause of action had not prescribed, as "an action to compel the trustee to convey the property registered in his name for the benefit of the *cestui que trust* does not prescribe"; and that the prescriptive period commences to run only when the trustee repudiates the trust through unequivocal acts made known to the *cestui que trust* — an element not satisfactorily shown in the instant case.

By Decision of October 30, 1998,[8] the appellate court affirmed the trial court's ruling, citing *Salvatierra v. Court of Appeals*[9] which held "that an action for reconveyance of registered land based on implied trust, prescribes in ten (10) years even if the decree of registration is no longer open to review."

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[6] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues: (Underscoring supplied)

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

[7] G.R. No. 110168, August 4, 1994, 235 SCRA 87, 94.

[8] Penned by Justice Buenaventura J. Guerrero, with the concurrence of Justices Portia Aliño-Hormachuelos and Presbitero J. Velasco, Jr. (now Associate Justice of this Court); *rollo*, pp. 42-47.

[9] G.R. No. 107797, August 26, 1996, 261 SCRA 45, 59.

The appellate court went on to hold that petitioner was guilty of laches, and assuming that the transfer of the properties in favor of respondents was procured through fraud, still, her action should have been filed within four years from the discovery of the fraud.

Hence, this petition, petitioner insisting that since her cause of action is for annulment or declaration of inexistent contracts, the provisions on void contracts, specifically Arts. 1390[10] and 1391[11] of the Civil Code, apply, hence, her cause of action had not prescribed, for under Article 1410 of the Civil Code, "the action or defense for the declaration of the inexistence of a contract does not prescribe."

Further, petitioner contends that even if there be implied trust, her cause of action has not prescribed because it is anchored on the annulment of a void or inexistent contract. Corollarily, she argues that if at all, a "resulting trust" and not a "constructive trust" was established in the case at bar, considering that she only gave her consent to respondents upon their representation that they were going to take possession and cultivate the properties with the understanding that they would later partition them among the legal heirs. She thus contends that the rule on imprescriptibility of actions to recover property held in trust apply to resulting

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[10] Art. 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

Those contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[11] Art. 1391. The action for annulment shall be brought within four years.

This period shall begin: In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

trusts, as in this case, so long as the trustee has not repudiated the trust.

Petitioner furthermore alleges that the continued assurances of respondents that partition proceedings were just dragging on, despite their having already transferred the titles in their names, is a clear indication that they have not repudiated the resulting trust, the requisites for which, as enunciated in *Huang v. Court of Appeals*,[12] not having been met. And she maintains that while the registration of land under the Torrens system operates as a constructive notice to the whole world, it cannot be construed as being equivalent to a notice of repudiation, for the same cannot be used as a shield for fraud.

On laches, petitioner cites *Palmera v. CSC*[13] holding that laches will not be taken against a plaintiff where the defendant is shown to have promised from time to time to grant the relief sought.

Finally, in support of her contention that her parents never executed the questioned Deed of Sale, petitioner submitted, for the Court's consideration, the Affidavits[14] of her sisters, herein respondents Iluminada and Aurea, averring that, *inter alia,* during their lifetime, their parents could not have sold the properties to their brothers Simplicio and Francisco and signed the deeds because they were illiterate; that they did not engage the services of Atty. Edmar Cabucana, respondents' counsel, to represent them in the case for they had no objection to the legal claim of their sister-herein petitioner Natividad.

From the earlier quoted-allegations in petitioner's complaint, it is clear that her action is one for declaration of the nullity of the Deeds of Sale which she claims to be either *falsified* — because at the time of the execution thereof, Pablo was already gravely ill and bedridden, hence he could not have gone and appeared before the Notary Public, much less understood the significance and legal deeds — and/or because there was no

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[12] G.R. No. 108525, September 13, 1994, 236 SCRA 420.

[13] *Supra* note 7.

consideration therefor. Clearly, following Article 1410 of the Civil Code, petitioner's action is imprescriptible.

But even if petitioner's complaint were to be taken as one for reconveyance, given that it is based on an alleged void contract, it is just the same as imprescriptible.

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Thus, if the trial court finds that the deed of sale is void, then the action for the declaration of the contract's nullity is imprescriptible. Indeed, the Court has held in a number of cases that an action for reconveyance of property based on a void contract does not prescribe. However, if the trial court finds that the deed of sale is merely voidable, then the action would have already prescribed."[15] (Emphasis and underscoring supplied)

At all events, since the complaint on its face does not indicate that the action has prescribed, *Pineda v. Heirs of Eliseo Guevara*[16] instructs:

An allegation of prescription can effectively be used in a motion to dismiss only **when the complaint on its face** shows that indeed the action has already prescribed. Otherwise, the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits and **cannot be determined in a mere motion to dismiss**. (Emphasis and underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated October 30, 1998 affirming the Order dated September 27, 1994 of the Regional Trial Court, Branch 35, Santiago City, Isabela, dismissing Civil Case No. 2084 is *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the trial court which is *DIRECTED* to *REINSTATE* petitioner's complaint to its docket and conduct appropriate proceedings thereon with dispatch.

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[14] *Rollo,* pp. 86-88.

[15] *Fil-Estate Golf and Development, Inc. v. Navarro,* G.R. No. 152575, June 29, 2007, 526 SCRA 51.

[16] G.R. No. 143188, February 14, 2007, 515 SCRA 627, 628-629.

SO ORDERED.

Quisumbing, Tinga, Nachura,[*] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 152150. December 10, 2008.]

SPS. REYNALDO O. PADUA and IRENE C. PADUA and GLADYS C. PADUA, *petitioners, vs.* **HONORABLE COURT OF APPEALS and UNIBANCARD CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE COURT OF APPEALS; PERIOD OF ORDINARY APPEAL. — Section 3, Rule 41 of the Rules of Court expressly provides the period for ordinary appeals: *SEC. 3. Period of ordinary appeal.*–The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, on appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

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[*] Additional member pursuant to Administrative Circular No. 84-2007, in lieu of Justice Presbitero J. Velasco, Jr. who took no part.

2. ID.; ID.; ID.; ID.; 15 DAY PERIOD TO APPEAL; ELUCIDATED. — In the case of *Neypes v. Court of Appeals,* the Court had occasion to settle the uncertainty as regards the reckoning point of the 15-day period to appeal. We held that: . . . [A] party litigant may file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. . . . In order to standardize the appeal periods provided in the Rules and to afford litigants a fair opportunity to appeal their cases, the Court deemed it practical to allow a fresh period of 15 days within which to file the notice of appeal in the RTC. Said period is to be counted from receipt of the order dismissing the motion for new trial or motion for reconsideration.

3. ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR. — Here, Unibancard received the RTC Order denying its motion for reconsideration on January 21, 2000. Fourteen days later, on February 4, 2000, Unibancard filed a notice of appeal. Clearly, Unibancard had seasonably appealed. The fresh 15-day period rule applies to the present case as it was pending and undecided when the ruling in *Neypes v. Court of Appeals* was promulgated. We have consistently held that rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage without violating the right of a party-litigant since there is no vested right in rules of procedure.

4. ID.; ID.; ID.; PERIOD FOR FILING APPEAL BRIEF; DELAY EXCUSED WHERE NO MATERIAL INJURY SUFFERED THEREFROM. — The Court of Appeals also correctly applied the dictum in *Ginete v. Court of Appeals* to the case at bar. In *Ginete*, as in this case, the appellate court gave due course to the appeal of petitioners therein even if the appeal brief was filed past the reglementary period. As held by the Court in Gregorio v. Court of Appeals, (T)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the

appellee's cause was prejudiced. Nowhere in the Motion to Dismiss Appeal did petitioners allege that it suffered any material injury by the 10-day delay in the service of appellant's brief by Unibancard.

5. ID.; ID.; ID.; GROUNDS FOR DISMISSAL OF APPEAL; DISCRETIONARY TO THE COURT OF APPEALS. — The grounds for dismissing an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the Court of Appeals. This can be gleaned from the very language of the Rules which uses the word *may* instead of *shall*. In *De Leon v. Court of Appeals*, we held that Section 1, Rule 50, which provides specific grounds for dismissal of appeal, manifestly "confers a power and does not impose a duty. Moreover, it is directory, not mandatory." With the exception of Section 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal.

APPEARANCES OF COUNSEL

Fernandez Pacheco & Dizon Law Offices for petitioners.
Sese & Associates Law Offices for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for certiorari seeks to reverse and set aside the Resolutions dated November 20, 2001[1] and January 23, 2002[2] of the Court of Appeals in CA-G.R. CV No. 68216. The appellate court had denied petitioners' Motion to Dismiss Appeal[3] and motion for reconsideration.[4]

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[1] *Rollo*, p. 20. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr. concurring.

[2] *Id.* at 22.

[3] CA *rollo*, pp. 37-41.

[4] *Id.* at 48-53.

The facts as borne by the records are as follows:

Unibancard Corporation (Unibancard) was engaged in the business of extending credit accommodations to cardholders by allowing them to make purchases from member establishments. Reynaldo O. Padua availed of a credit card membership with Unibancard. He named Gladys C. Padua as co-obligor.

On February 17, 1999, Unibancard instituted a collection suit[5] against Reynaldo and Gladys to recover ₱553,770.09. This amount allegedly represents their obligation to Unibancard in the principal amount of ₱297,091.74 plus ₱95,663.54 interest and penalty charges of ₱161,014.81. Irene C. Padua, Reynaldo's wife, was impleaded as a formal party to the case. The complaint was docketed as Civil Case No. 99-381 and raffled to Branch 60 of the Regional Trial Court (RTC), Makati City.

At the pre-trial, petitioners questioned the sufficiency of the Special Power of Attorney[6] (SPA) executed by Unibancard to authorize Atty. Noel Mingoa to appear in its behalf. Petitioners filed a motion to declare Unibancard non-suited which the RTC granted in its Order[7] dated October 25, 1999. In dismissing the case, the trial court held that the SPA empowered Atty. Mingoa to compromise and make admissions on behalf of Unibancard but not to represent it on pre-trial. Unibancard's motion for reconsideration was denied in an Order[8] dated December 17, 1999. It received notice of the order on January 21, 2000.

On February 4, 2000 Unibancard filed a Notice of Appeal *Ad Cautelam*[9] with the Court of Appeals. The appellate court then required it to file an appellant's brief within 45 days from notice[10] of its Order dated October 26, 2000. However, it was

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[5] Records, pp. 1-6.

[6] *Id.* at 84-85.

[7] *Rollo*, pp. 37-39.

[8] *Id.* at 48.

[9] Records, p. 119.

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

not until January 11, 2001 that Unibancard was able to submit a brief.[11]

On April 11, 2001, petitioners filed a Motion to Dismiss Appeal on the ground that the Notice of Appeal was filed beyond the 15-day reglementary period to appeal under Rule 45 of the Rules of Court. The Court of Appeals denied said motion in the assailed Resolution dated November 20, 2001. The decretal portion reads:

> Acting on the **Motion to Dismiss Appeal** dated April 6, 2001 filed by the defendants-appellees, thru counsel, and considering the dictum of the Supreme Court in the case of Ginete vs. Court of Appeals, 296 SCRA 38, that the prerogative to relax procedural rules of the most mandatory character in terms of compliance, such as the period to appeal has been invoked and granted in a considerable number of cases and in order to afford every party litigant the amplest opportunity to ventilate his case in court without giving much premium to technicalities, the same is hereby **DENIED.**
>
> **SO ORDERED.**[12]

Petitioners filed a motion for reconsideration. On January 23, 2002, the appellate court issued the second assailed Resolution which decreed:

> Finding no merit [i]n the **Motion for Reconsideration** dated December 7, 2001, filed by appellees, thru counsel, considering that the grounds alleged therein have already been amply addressed by the Court in the assailed resolution, the same is hereby **DENIED.**
>
> Accordingly, the period within which to file appellees' brief shall again commence to run from notice.
>
> **SO ORDERED.**[13]

Hence, this petition which proffers the sole issue:

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[11] *Rollo*, p. 172.

[12] *Id.* at 20.

[13] *Id.* at 22.

THE RESPONDENT HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE PETITIONERS' MOTION TO DISMISS APPEAL AND MOTION FOR RECONSIDERATION CONTRARY TO THE RULES AND THE JURISPRUDENTIAL PRECEPTS LAID DOWN BY THIS HONORABLE TRIBUNAL[14]

Did the appellate court commit grave abuse of discretion when it allowed respondent's appeal?

Unibancard obtained notice of the October 25, 1999 RTC Order on December 6, 1999. On December 15, 1999, it filed a Motion for Reconsideration.[15] Then, on January 21, 2000, respondent's counsel was notified of the Order dated December 17, 1999 which denied said motion for reconsideration.

Petitioners submit that Unibancard had only until January 28, 2000 to perfect its appeal. They explain that since eight days[16] had elapsed when Unibancard sought reconsideration, it had only the remaining 7 days of the 15-day reglementary period within which to appeal from notice of the denial of its motion for reconsideration. Since Unibancard filed a notice of appeal on February 4, 2000, petitioners contend that its appeal had been filed out of time. Hence, the appellate court did not acquire jurisdiction over the case.

In its Memorandum,[17] Unibancard admits having filed its appeal and appellant's brief beyond the period allowed by the Rules. It explains, however, that a computer virus plagued all the computers of its counsel's law firm and rendered the file containing its appellant's brief inaccessible. It purportedly took Unibancard's counsel 10 days to reconstruct the same. Unibancard agrees with the Court of Appeals that the ruling in *Ginete v. Court of Appeals*[18] applies squarely to its case.

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[14] *Id.* at 9.

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

[16] *Id.* at 10.

[17] *Id.* at 169-178.

[18] G.R. No. 127596, September 24, 1998, 296 SCRA 38.

After a careful consideration of the facts of this case, the Court resolves to dismiss the instant petition.

Section 3, Rule 41 of the Rules of Court expressly provides the period for ordinary appeals:

> **SEC. 3.** *Period of ordinary appeal.*— The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, on appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

In the case of *Neypes v. Court of Appeals*,[19] the Court had occasion to settle the uncertainty as regards the reckoning point of the 15-day period to appeal. We held that:

> … [A] party litigant may file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration….[20]

In order to standardize the appeal periods provided in the Rules and to afford litigants a fair opportunity to appeal their cases, the Court deemed it practical to allow a fresh period of 15 days within which to file the notice of appeal in the RTC. Said period is to be counted from receipt of the order dismissing the motion for new trial or motion for reconsideration.[21]

Here, Unibancard received the RTC Order denying its motion for reconsideration on January 21, 2000. Fourteen days later, on February 4, 2000, Unibancard filed a notice of appeal. Clearly, Unibancard had seasonably appealed.

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[19] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[20] *Id.* at 646.

[21] *Id.* at 644.

The fresh 15-day period rule applies to the present case as it was pending and undecided when the ruling in *Neypes v. Court of Appeals* was promulgated. We have consistently held that rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage without violating the right of a party-litigant since there is no vested right in rules of procedure.[22]

Consequently, the Court of Appeals also correctly applied the dictum in *Ginete v. Court of Appeals* to the case at bar. In *Ginete*, as in this case, the appellate court gave due course to the appeal of petitioners therein even if the appeal brief was filed past the reglementary period.

> As held by the Court in *Gregorio v. Court of Appeals* (70 SCRA 546 [1976]), (T)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced.[23]

Nowhere in the Motion to Dismiss Appeal did petitioners allege that it suffered any material injury by the 10-day delay in the service of appellant's brief by Unibancard. Parenthetically, the only ground for dismissal which petitioners cited was Unibancard's supposed belated appeal.

In any case, the grounds for dismissing an appeal under Section 1[24] of Rule 50 of the Rules of Court are discretionary

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[22] *De los Santos v. Vda. de Mangubat*, G.R. No. 149508, October 10, 2007, 535 SCRA 411, 422.

[23] *Ginete v. Court of Appeals*, *supra* at 47, citing *Carco Motor Sales v. Court of Appeals*, No. L-44609, August 31, 1977, 78 SCRA 526, 529.

[24] **SECTION 1.** *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

upon the Court of Appeals. This can be gleaned from the very language of the Rules which uses the word *may* instead of *shall*. In *De Leon v. Court of Appeals*,[25] we held that Section 1, Rule 50, which provides specific grounds for dismissal of appeal, manifestly "confers a power and does not impose a duty. Moreover, it is directory, not mandatory." With the exception of Section 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal.[26]

WHEREFORE, the instant petition is *DISMISSED*. The Resolutions dated November 20, 2001 and January 23, 2002 of the Court of Appeals in CA-G.R. CV No. 68216 are hereby *AFFIRMED*.

SO ORDERED.

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

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41;

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44;

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) The fact that the order or judgment appealed from is not appealable.

[25] G.R. No. 138884, June 6, 2002, 383 SCRA 216.

[26] *Id.* at 230.

SECOND DIVISION

[G.R. No. 154108. December 10, 2008]

FIRST UNITED CONSTRUCTION CORPORATION, *petitioner, vs.* **MENANDRO G. VALDEZ and RAMON E. ADEA,** *respondents.*

[G.R. No. 157505. December 10, 2008]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **HON. ROSE MARIE ALONZO-LEGASTO, Presiding Judge, Regional Trial Court of Quezon City, Branch 99, MENANDRO G. VALDEZ, and RAMON ADEA IV,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE; NOT ESTABLISHED IN CASE AT BAR. — In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint. While rules of evidence prevailing in courts of law and equity shall not be controlling, this assurance of a desirable flexibility in administrative procedure does not go as far as to justify orders without basis in evidence having rational probative force. x x x [Here,] FUCC having failed to support its charges against respondents with substantial evidence, the Court of Apprals did not err in reversing the Ombudsman decision and accordingly dismissing the administrative complaint against respondents to thus render NHA's petition in G.R. No. 157505 moot and academic.

APPEARANCES OF COUNSEL

Lamberto T. Tagayuma for FUCC.
Hizon & Miranda Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In February 1998, the National Housing Authority (NHA), petitioner in G.R. No. 157505, contracted the First United Construction Corporation (FUCC), petitioner in G.R. No. 154105, for its Freedom Valley Resettlement Project (the Project) in Sitio Boso-Boso, Antipolo, Rizal.

Menandro G. Valdez (Valdez) and Ramon E. Adea (Adea) who are respondents in both petitions, Principal Engineers of the NHA, formed part of the NHA team tasked to oversee FUCC's contract works and provide guidance for the proper implementation of the Project.

The technical specifications of the Project called for the laying of a subbase course and base course on the roads before pouring concrete. FUCC instead substituted concrete treated base course (CTBC) for subbase course, despite repeated written reminders by respondents to follow the specifications of the Project.[1] And FUCC refused to have the necessary materials and field density tests conducted before pouring concrete on portions of the roads, and even poured concrete without proper approval, its attention having been called by respondents to its failure to comply with requirements notwithstanding.[2]

On December 11, 1998, FUCC submitted its Second Progress Billing, attaching thereto the Abstract of Accomplishment[3] for the Project from July 1, 1998 to November 30, 1998. It billed the NHA a total of ₱50,701,846.80 inclusive of ₱2,305,240 representing cost for subbase course on major roads, ₱129,800 representing cost for subbase course on minor roads, and an additional ₱376,040 representing cost for subbase course or a total cost of ₱2,811,080 for subbase course.[4]

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[1] Ombudsman records, pp. 70-82.

[2] *Id.* at 82-93.

[3] *Id.* at 49-62.

[4] *Id.* at 49-50, 61.

In the meantime, the road leading to the Project collapsed after a typhoon. The collapse of the road was the subject of three articles by Art A. Borjal (Borjal) in *The Philippine Star* in which he wrote about the poor construction of the roads and the massive wastage of government funds on the Project.[5] The first of the three articles was published on December 27, 1998.

During a NHA-Contractor's meeting on January 12, 1999, respondent Valdez raised the non-compliance by FUCC with the approved plans and specifications of the Project, particularly the use of CTBC instead of subbase course. Mariano Raner (Raner), the Officer-in-Charge of the Project, explained that the technical practice is acceptable provided that the subgrade course has a sufficient California Bearing Ratio value to support the pavement and that CTBC is most advantageous during rainy season. It was resolved during the same meeting that before payment per road works would be considered, tests would be first conducted to find out if the constructed roads met the acceptable standard.[6]

Respondent Valdez later recommended to the Officer-in-Charge (OIC) of the Project that only ₱16,342,226.23 be paid to FUCC based on the NHA's own Abstract of Physical Accomplishment, he explaining as follows:

> Last 18 February 1999, the General Manager and the Manager, SLB visited the site and conducted a meeting. The General Manager instructed the NHA staff to process the billing of the Contractor within one week. One of the issues resolved at that meeting was the use of Official Receipt[s] as support for payment with regards to the furnishing of equipment and furniture, which unfortunately as of this date have not yet been submitted by the Contractor.
>
> Pending the result of the tests conducted by JSR Geotechnical Services on the structural layer of the roads, the NHA engineers evaluated the request for payment, which was given to the Contractor last 24 January 1999. This was the basis for the meeting held on 25 February 1999 between the Contractor and the NHA technical staff, which you have presided. It was discuss[ed] then that a meeting

[5] *Id.* at 68.

[6] *Id.* at 14.

with JSR be held since you informed us that they have completed the report on the test conducted.

During the meeting with JSR, Contractor, and the NHA technical staff held last 02 March 1999, the result of the tests were presented and validated our observation that the Contractor ha[s] indeed not laid sub-base coarse [*sic*] materials on the roads. In addition, all of the in-placed Field Density Tests for base coarse materials laid do not conform with the FDT as required by the approved specifications. Moreover, the thickness of some of the said base coarse materials does not conform with the required thickness based on the approved plans of 180mm. It was the opinion of the NHA technical staff at that time that additional tests be conducted on the roads with respect to the laid base course materials to have a conclusive report on its acceptability and conformity with the approved plans and specifications.

With these development[s], the NHA technical staff prepared the Abstract of Physical Accomplishment xxx from the period 01 July 1998 to 31 December 1998 in the total amount of P16,342,226.23, incorporating among others the agreement reached with the Contractor in the 25 February 1999 meeting, for your review and perusal. This, however, would still need the required Official Receipt (OR) of the Contractor with regards to the equipment and furniture.[7]

On March 29, 1999, FUCC, through its Executive Vice-President Ben S. Dumaliang (Dumaliang) and the Project Manager Samuel A. Aquino (Aquino), filed an administrative complaint against respondents before the Office of the Ombudsman for dishonesty, grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service.

FUCC alleged that respondents tried to extort money from it but failed, hence, they refused to act with dispatch on its Second Progress Billing and to officially document various variation orders despite instructions by their superiors.[8]

FUCC further alleged that respondents consistently arrived late at the Project site, used for personal purposes the service

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[7] *Id.* at 66-67.

[8] *Id.* at 8-10.

vehicles leased by it to NHA for the Project, and used the Project site as their private gun firing range.[9]

In their Joint-Counter Affidavit,10 respondents alleged that FUCC filed the complaint to coerce them into recommending full payment of its Second Progress Billing amounting to ₱50,701,846.80 and force them to assist the NHA Management and FUCC in the cover-up on the investigations resulting from the allegations in Borjal's newspaper articles.

Respondents further alleged that the Project OIC Raner and the NHA General Manager Angelo F. Leynes (Leynes) pressured them to attribute the collapse of the road to natural causes and to justify payment on the works done outside of the specifications.[11]

At the preliminary conference held on August 8, 1999,[12] respondents manifested that they were foregoing the conduct of a formal hearing and were submitting the case for resolution on the basis of the available evidence on record.[13]

By Order of August 30, 1999, the Ombudsman limited the issues of the case as follows:

1. Whether respondents tried to extort money from the complainant;
2. Whether respondents used for their personal use the vehicles leased to the NHA by FUCC; and
3. Whether respondents unjustly failed to act on FUCC's requests.[14]

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[9] *Id.* at 16-48, 357-364.

[10] *Id.* at 122-126.

[11] *Id.* at 123-124.

[12] *Id.* at 286.

[13] *Ibid.*

[14] *Ibid.*

And it ordered the parties to submit their respective memoranda which they complied with.[15]

By Decision[16] of January 13, 2000 bearing his January 28, 2000 approval, the Ombudsman absolved respondents of negligence in acting on FUCC's Second Progress Billing,[17] but found them liable for extortion and using the vehicles leased to the NHA for personal use, and accordingly dismissed them from the service.[18]

Thus, the Ombudsman decision disposed:

> **WHEREFORE, PREMISES CONSIDERED,** this Office hereby finds the respondents guilty of **GRAVE MISCONDUCT** punishable by **DISMISSAL FROM THE SERVICE** and **CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE** which carries the penalty of **SUSPENSION FROM WORK FOR SIX MONTHS WITHOUT PAY;** the former offense carrying a heavier penalty, Respondents MENANDRO G. VALDEZ and RAMON G. ADEA, are both hereby meted the penalty of **DISMISSAL FROM SERVICE**.
>
> Further, the General Manager of the NHA is hereby ordered to implement the instant Decision in accordance with law and advice of action taken thereof be furnished this Office within ten (10) days from receipt hereof.
>
> SO ORDERED.[19] (Emphasis in the original)

Respondents thereupon wrote a letter[20] to the NHA informing it that as they intended to file a Motion for Reconsideration of the decision of the Ombudsman pending its finality, they had the right to remain in office. Respondents' letter was served on

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[15] *Ibid*.

[16] *Id.* at 372-384.

[17] *Id.* at 380.

[18] *Id.* at 378-380, 381-382.

[19] *Id.* at 381-383.

[20] *Vide* CA *rollo* (CA G.R. No. 57963), p. 65.

the NHA on February 15, 2000 at about 4:00 PM.[21] The following day, respondents received a Memorandum of February 14, 2000 signed by Leynes informing them of their termination from employment,[22] drawing them to file before the Regional Trial Court (RTC) of Quezon City a complaint[23] against the NHA, its General Manager Leynes, and NHA Human Resource Department Manager Lorna M. Seraspe, for injunction with application and prayer for the issuance of preliminary prohibitory injunction and/or a temporary restraining order. Branch 99 of the Quezon City RTC issued a temporary restraining order and a preliminary prohibitory injunction,[24] prompting the NHA to file before the Court of Appeals a petition[25] against the RTC trial judge and herein respondents for certiorari and prohibition with prayer for the issuance of writ of preliminary injunction and temporary restraining order. The NHA petition was docketed as C.A. G.R. No. 57963.

Respondents did file a Motion for Reconsideration of the Ombudsman decision which was denied, hence, they challenged the decision *via* petition before the Court of Appeals which was docketed as C.A. G.R. No. 62534.

The Court of Appeals, in C.A. G.R. No. 62534, issued a temporary restraining order[26] enjoining the Ombudsman and the NHA from implementing the Ombudsman decision of January 13, 2001.

By Decision of February 28, 2002 rendered in C.A. G.R. No. 62534, the Court of Appeals, finding FUCC's administrative complaint to be bereft of substantial evidence,[27] reversed the

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[21] *Id.* at 66.

[22] *Id.* at 67; *rollo* (G.R. No. 157505), p. 177.

[23] CA *rollo* (CA-SP G.R. No. 57963), pp. 63-72.

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

[25] *Id.* at 2-29.

[26] CA *rollo* (CA-SP G.R. No. 62534), pp.174-175.

[27] Decision penned by Court of Appeals Associate Justice Bernardo P. Abesamis, with the concurrences of Associate Justices Bienvenido L. Reyes and Perlita J. Tria Tirona. *Id.* at 562-579.

Ombudsman's decision and accordingly dismissed the administrative cases against respondents. Thus, it disposed:

> **WHEREFORE,** the instant petition is hereby **GIVEN DUE COURSE** and **GRANTED**. The Decision of 13 January 2000 of the Office of the Ombudsman, as well as its Orders dated 18 May 2000 and 27 December 2000 are hereby **SET ASIDE** and declared **NULL AND VOID**. The administrative case against petitioners is **DISMISSED.**
>
> **SO ORDERED**.[28] (Emphasis and underscoring supplied)

FUCC's Motion for Reconsideration[29] was denied.[30]

In view of its decision in C.A. G.R. No. 62534, the Court of Appeals dismissed C.A. G.R. No. 57963 for having become moot and academic.[31]

FUCC appealed the appellate court's decision in C.A. G.R. No. 62534 *via* the first subject petition, for review,[32] docketed as G.R. No. 154108. FUCC faults the appellate court:

I

x x x IN HOLDING THAT THE OMBUDSMAN ALLEGEDLY RELIED SOLELY UPON "THE MERE AFFIDAVITS OF FUCC'S WITNESSES" WHICH ALLEGEDLY DO "NOT FALL UNDER THE REQUIRED SUBSTANTIAL EVIDENCE IN AN ADMINISTRATIVE PROCEEDINGS [*SIC*].

II

x x x IN MISAPPRECIATING CERTAIN FACTS INDUBITABLY ESTABLISHED BY THE EVIDENCE ON RECORD TO FAVOR RESPONDENTS.

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[28] *Id.* at 578-579.

[29] *Id.* at 604-613.

[30] *Id.* at 653.

[31] Decision of January 31, 2003, penned by Court of Appeals Associate Justice Edgardo P. Cruz, with the concurrence of Associate justices Salvador J. Valdez, Jr. and Mario L. Guariña III. CA *rollo* (C.A. G.R. No. 57963), pp. 230-235.

[32] *Rollo* (G.R. No. 154108), pp. 28-65.

III

x x x IN [TAKING] AS GOSPEL TRUTH RESPONDENTS' PATENT, VICIOUS AND MALICIOUS LIE THAT FUCC ALLEGEDLY FLAGRANTLY VIOLATED THE TERMS OF THE CONTRACT.[33] (Emphasis in the original)

The NHA appealed the dismissal of C.A. G.R. No. 57963 *via* petition for review,[34] G.R. No. 157505. NHA faults the appellate court

1. x x x in denying due course and dismissing NHA petition for *certiorari* and prohibition for being moot and academic.

2. x x x in not holding that the court a quo has no jurisdiction over the subject matter of the complaint of Private Respondents.[35]

By Resolution of July 16, 2003, the Court consolidated G.R. No. 157505 and G.R. No. 154108.[36]

In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint.[37] While rules of evidence prevailing in courts of law and equity shall not be controlling, this assurance of a desirable flexibility in administrative procedure does not go as far as to justify orders without basis in evidence having rational probative force.[38]

In the administrative case against respondents subject of G.R. No. 157505, the Ombudsman found them liable for extortion based on the affidavits of FUCC's witnesses,[39] holding that

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[33] *Rollo* (G.R. No. 154108), pp. 50-51.

[34] *Rollo* (G.R. No. 157505), pp. 121-148.

[35] *Id.* at 130.

[36] *Id.* at 221.

[37] Vide *Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 483.

[38] Vide *Sps. Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664, 670 (2003).

[39] Vide Ombudsman records, pp. 378-379.

"cases of extortion virtually depend on the credibility of complainant's testimony because of [their] intrinsic nature where only the participants can testify to [their] occurrences."[40]

The records show that Valdez' recommendation to pay the FUCC only ₱16,342,226.23 came about in light of his finding that FUCC failed to lay subbase in accordance with the specifications of the Project.

FUCC itself admits not having laid subbase, even as it charged the NHA for the cost thereof despite its claim that it omitted the subbase "to save funds."[41] The FUCC claims that the NHA approved the substitution of CTBC for conventional base course and subbase. However, FUCC showed no evidence of such approval other than its own letters to the NHA stating its intention to use CTBC instead of the conventional base course and subbase required by the contract.[42]

Respecting the charge that respondents used for personal purposes the vehicles leased by FUCC to the NHA, the same is unsupported by substantial evidence. Valdez's signature on the entries in the logbook reflecting the vehicles' trips[43] does not necessarily indicate that he and/or Adea took the trips. It could indicate that he was attesting to the authenticity of the trips. At any rate, FUCC did not refute the claim that there were instances when other NHA personnel used the vehicles.[44]

IN SUM, FUCC having failed to support its charges against respondents with substantial evidence, the Court of Appeals did not err in reversing the Ombudsman decision and accordingly dismissing the administrative complaint against respondents to thus render NHA's petition in G.R. No. 157505 moot and academic.

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[40] *Id.* at 378.

[41] *Id.* at 106, 172.

[42] *Id.* at 171-174.

[43] *Id.* at 21-44.

[44] CA *rollo* (C.A. G.R. No. 62534), pp. 43-44. *Vide* Ombudsman records, pp. 280-281.

WHEREFORE, the petitions are *DENIED*.

Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 155454. December 10, 2008]

EDUARDO COLMENARES and EPIFANIA COLMENARES, *petitioners, vs.* **HEIRS OF ROSARIO VDA. DE GONZALES, NAMELY: HOMERO S. GONZALES, VIOLETA GALVEZ, FLORENCIA BELO, IMELDA CANCIO AND LETICIA DE PADUA; AND HEIRS OF HOMERO GONZALES, NAMELY: AIDA CRUZ GONZALES, DIANA GONZALES AND DANIEL GONZALES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PRINCIPLE OF HIERARCHY OF COURTS; DISREGARDED WHEN PETITION FOR CERTIORARI FILED WITH THE COURT OF APPEALS, BYPASSING RTCs CONCURRENT JURISDICTION, OVER THE MTC DECISION. — In an appeal by *certiorari* under Rule 45 of the Rules of Court, we are asked to resolve only questions of law. The question of law herein, based on the given state of facts, is whether the CA erred in denying due course to the petition for *certiorari* which was not signed by petitioner Epifania, wife of Eduardo, and which violated the

principle on hierarchy of courts. Curiously, petitioners, deliberately or unintentionally, failed to explain why they are justified in directly filing a petition for *certiorari* with the CA, bypassing the RTC's concurrent jurisdiction over the MTC's decision. On that score alone, the petition is dismissible. Direct resort to a higher court, the CA in this instance, cannot be sanctioned when the remedy sought by a petitioner may equally be availed in the RTC, which has concurrent jurisdiction with the CA and this Court, to issue a writ of *certiorari* against the MTC. Petitioners have failed to make a showing that the redress desired cannot be obtained in the RTC. In fact, petitioners made no attempt to do so at all. Thus, the CA committed no error in denying due course to the petition.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; VERIFICATION AND SWORN CERTIFICATION OF NON-FORUM SHOPPING; NON COMPLIANCE THEREOF IS SUFFICIENT GROUND FOR DISMISSAL OF PETITION; LIBERAL APPLICATION OF THE RULE, NOT WARRANTED IN CASE AT BAR. — Section 1, Rule 65 of the Rules of Court, in relation to Section 3, Rule 46 thereof, explicitly requires that a petition for *certiorari* shall be verified and accompanied by a sworn certification of non-forum shopping. The last paragraph of Section 3, Rule 46 unequivocally states that a petitioner's failure to comply with these requirements shall be sufficient ground for the dismissal of the petition. The foregoing misstep, taken together with petitioners' violation of the rule on hierarchy of courts, contrary to petitioners' misleading presentation of issues, cannot be cured by simply invoking motherhood statements like substantial justice. Moreover, the application of Section 6, Rule 1 of the Rules of Court, on the liberal construction of the rules, is not warranted upon a scrutiny of petitioners' claims.

APPEARANCES OF COUNSEL

Fernandez and Associates for petitioners.
Manuel G. Maranga for A. Gonzales.
Lapinid Law Office for other respondents.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Resolutions[1] dated June 21, 2002 and September 3, 2002, respectively, of the Court of Appeals (CA) which denied due course to petitioner-spouses Eduardo and Epifania Colmenares' petition for *certiorari*.

The brief antecedents.

Rosario Vda. de Gonzales and Homero S. Gonzales (original plaintiffs in the Municipal Trial Court [MTC]), substituted by their respective sets of heirs, namely, respondents Homero Gonzales, Violeta Galvez, Florencia Belo, Imelda Cancio and Leticia de Padua for Rosario; and respondents Aida Cruz, Diana and Daniel, all surnamed Gonzales, for Homero, filed a Complaint for ejectment against Eduardo and Epifania.

Original plaintiffs were co-owners of lots denominated as Lots 209-A, 210 and 10186-B situated at Poblacion, Talisay, Cebu. From 1946, Rosario, as lessor, and Arturo Colmenares, on behalf of the Colmenares family, as lessee, entered into an oral contract of lease. Arturo introduced major improvements on the subject lots to operate a beach resort thereon with Eduardo as local manager thereof. The lease did not have a fixed period and only stipulated payment of ₱150.00 as monthly rent. The rent was increased to ₱350.00 in August 1982, and further increased to ₱1,000.00 from September 1982 until August 1991.

Parenthetically, upon Arturo's death on June 12, 1962, Eduardo took over the family business, and failed to pay rent from February 1, 1967 to April 30, 1968 due to various financial difficulties. This failure to pay rent resulted in the filing of an ejectment case against petitioners docketed as Civil Case No. 140, wherein judgment was rendered ordering Eduardo to

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[1] Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Martin S. Villarama, Jr. and Rebecca de Guia-Salvador, concurring, *rollo*, pp. 19-20, 22.

vacate the subject lots and pay unpaid rentals and attorney's fees.

Posthaste, upon learning of the court decision on his return to Cebu, Eduardo settled and paid the back rentals to Rosario. Thereafter, the parties agreed to maintain the standing lease agreement.

Subsequently, the parties agreed on the rent increases which rent, at its maximum, as previously stated, was pegged at ₱1,000.00. At some point, there were discussions between the parties on the possibility of an outright sale of the subject lots. However, no agreement was reached by the parties.

Respondents sent Eduardo demand letters, the last of which was dated June 14, 1983, although the latter continuously paid the ₱1,000.00 monthly rent. These payments were received by respondents. Thus, Eduardo was surprised at the filing of the ejectment case against him.

Respondents alleged in their complaint that the lease agreement was on a month-to-month basis which terminated upon Arturo's death. Thus, respondents asked petitioners to vacate the subject lots and remove the improvements introduced thereon. Petitioners' refusal to comply with respondents' demands constrained the latter to file the case against the former.

During pre-trial, the parties submitted the following issues for resolution:

1. Whether [petitioners] can be ejected from the land owned by [respondents];

2. Whether [petitioners] are builders in good faith; and

3. Whether ₱5,000.00 per month is a reasonable amount for the use of the subject [lots].

After trial, the MTC rendered a decision finding that: (1) there is an oral contract of lease between the parties, Rosario and Arturo, the latter on behalf of the Colmenares family, for an indefinite period conditioned solely on the Colmenares family's

continuous payment of monthly rentals; (2) the Colmenares family, including herein petitioners, are not builders in good faith, and, as such, they should demolish and remove the improvements upon termination of the lease without reimbursement for their expenses; and (3) the belated imposition of a ₱5,000.00 monthly rental for the subject lots is inequitable, considering the original state of the subject lots at the constitution of the lease, and the substantial investments poured therein by the Colmenares family. The MTC fixed the period of the lease at twenty (20) years reckoned from the date of the decision in 1981, and set the rent at ₱1,500.00 per month, with a possible ten percent (10%) increase each year.

Dissatisfied, respondents appealed the decision of the MTC to the Regional Trial Court (RTC), Branch 15, Cebu City. The RTC affirmed the MTC finding that the Colmenares family, including herein petitioners, may not be ejected by respondents from the subject lots because of the existing lease agreement between the parties. However, the RTC reduced the twenty (20)-year lease period fixed by the MTC to ten (10) years and increased the monthly rent to ₱5,000.00.

Petitioners and respondent-heirs of Homero S. Gonzales respectively filed a motion for reconsideration with the RTC, whereas respondents heirs of Rosario Vda. de Gonzales directly filed a petition for review of the RTC decision with the CA. In this regard, the RTC issued an Order dated July 13, 1994, subsequently reiterated in a December 14, 1995 Order, holding in abeyance the resolution of petitioners' Motion for Reconsideration until receipt of the CA decision on respondent-heirs of Rosario Vda. de Gonzales' appeal. However, it appears that the CA denied respondent-heirs of Rosario's appeal, a decision which attained finality by November 21, 1997.[2]

Meanwhile, on January 24, 1996, the RTC issued the following Order:

It appearing that the Court of Appeals has given due course to the petition for *certiorari* from the decision of this Court, the court is

[2] CA *rollo*, p. 55.

left with no other choice but to suspend this proceedings to await the decision of the Court of Appeals thereon. And if the Court of Appeals will affirm the decision, then execution will follow. And if the Court of Appeals reverses the decision of this Court, then there is no more decision to talk about. Further proceedings in this case are hereby suspended accordingly.

Later on, respondents filed a motion for issuance of a writ of execution which the MTC granted in light of the latest RTC Order and the dismissal by the CA of respondent-heirs of Rosario Vda. de Gonzales' appeal, to wit:

> With the finality of the decision of the Court of Appeals, and the remand of the records of the case to this Court, which, in effect, is an order or directive by the RTC to this Court to execute its judgment, this Court finds no more legal impediment for the issuance of the writ of execution prayed for.
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> WHEREFORE, the motion for issuance of [a] writ of execution is granted.[3]

From this MTC Order, petitioners directly filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA alleging grave abuse of discretion in the MTC's issuance of a writ of execution. The CA issued the herein assailed Resolutions denying due course to petitioners' petition for (1) violation of the hierarchy of courts in bypassing the RTC's *certiorari* jurisdiction over the MTC and directly invoking that of the CA, and (2) non-compliance with the rules on verification and certification of non-forum shopping when Epifania failed to sign thereon.

Hence, this appeal by *certiorari*.

Upon order of this Court, respondents were required to file a Comment on the petition. All the respondents, except Aida Gonzales, filed their Comment on April 9, 2003. In our Resolution dated July 7, 2003, we ordered petitioners to submit to this Court the address of respondent Aida or the name of her counsel.

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[3] Order dated June 30, 2000; *rollo*, p. 43.

Aida's counsel of record in the proceedings below, Atty. Manuel G. Maranga, filed an Explanation and Compliance stating that he did not receive a copy of the instant petition. Counsel explained that he had lost contact with Aida and diligent efforts to contact the latter proved futile. Paragraph 4 of the Explanation and Compliance filed by Atty. Maranga, reads:

> 4. That the last time undersigned counsel saw respondent Aida Gonzales was when he filed on July 1994 on behalf of the Heirs of Homero S. Gonzales, deceased spouse of respondent Aida Gonzales, a Motion for Reconsideration of the decision of the trial court in Civil Case No. CEB 11290 (hereto attached as Annex "A"), which until now has not been resolved, thereby making undersigned counsel believe that the case has been settled during these past many years. As a matter of fact, upon EARNEST inquiry by undersigned counsel, it was gathered by him that the property in question had already been allegedly bought from the Gonzaleses et al., except respondent Aida Gonzales, by a certain "BEBOT" known to be MRS. ALEGRE, daughter of Arturo Colmenares, former occupant of the property in question and niece of petitioner Eduardo Colmenares and that by virtue of said alleged purchase by BEBOT, said Eduardo Colmenares has no more interest in the property in question.[4]

We required petitioners to send a copy of the petition to Atty. Maranga. Petitioners, to date, have yet to comply with the foregoing resolution. Meanwhile, petitioners' counsel of record, Atty. Rex J.M.A. Fernandez, when asked to show cause why he should not be disciplinarily dealt with, or held in contempt, for failure to comply with our resolution, filed an Explanation narrating the falling out he had with petitioners, specifically Eduardo, in 2002. Eduardo allegedly told Atty. Fernandez that he was terminating the services of the latter. Thus, Atty. Fernandez presumed that Eduardo himself would notify this Court of the fact of termination, since Eduardo had done so before the lower courts in other cases where Atty. Fernandez had represented him. We accepted Atty. Fernandez' explanation as satisfactory, and we required petitioners to inform this Court of the name and address of their new counsel. Petitioners again failed to comply with the order.

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[4] *Id.* at 84.

Notwithstanding petitioners' obvious lack of interest in pursuing their case, we shall resolve it now.

At the outset, we note that petitioners raised extraneous issues which were not touched upon by the CA in denying due course to their petition. In any event, petitioners posit the following issues for our resolution, to wit:

1. Whether the decision of the Municipal Trial Court dated September 27, 1991, as modified by the decision of the Regional Trial Court dated June 13, 1994, became final and executory.

2. Whether the decision of the Municipal Trial Court dated September 27, 1991, as modified by the decision of the Regional Trial Court date June 13, 1994, can be executed after the period of ten (10) years from the date the decision was rendered.

3. Whether the levy on the property of petitioners is valid.

4. Whether verification of a pleading is jurisdictional.

We detect petitioners' clever but transparent ploy to circumvent the rule on hierarchy of courts and have us settle factual issues that were not passed upon by the lower courts because of petitioners' fatal procedural lapses. In the same vein, we unmask petitioners' vain attempt to lend merit to their petition by raising ostensibly substantial issues which, likewise, were never touched upon by the appellate court. It is on the basis of these submissions that petitioners' arguments glaringly assail the MTC's supposedly erroneous ruling.

We reject petitioners' posturing. In an appeal by *certiorari* under Rule 45 of the Rules of Court, we are asked to resolve only questions of law.[5] The question of law herein, based on the given state of facts, is whether the CA erred in denying due course to the petition for *certiorari* which was not signed by petitioner Epifania, wife of Eduardo, and which violated the principle on hierarchy of courts. Curiously, petitioners, deliberately or unintentionally, failed to explain why they are justified in directly filing a petition for *certiorari* with the CA, bypassing the RTC's concurrent jurisdiction over the MTC's decision.

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[5] See RULES OF COURT, Rule 45, Sec. 1.

On that score alone, the petition is dismissible. Direct resort to a higher court, the CA in this instance, cannot be sanctioned when the remedy sought by a petitioner may equally be availed in the RTC, which has concurrent jurisdiction with the CA and this Court, to issue a writ of *certiorari* against the MTC.[6] Petitioners have failed to make a showing that the redress desired cannot be obtained in the RTC.[7] In fact, petitioners made no attempt to do so at all. Thus, the CA committed no error in denying due course to the petition.

On the other ground for the dismissal relied upon by the CA, *i.e.*, Epifania's failure to co-sign the verification and certification against non-forum shopping, we likewise sustain the appellate court's action. Section 1,[8] Rule 65 of the Rules of Court, in

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[6] See RULES OF COURT, Rule 65, Sec. 4, par. 2:

SEC. 4. *When and where to file the petition.* — x x x

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

[7] See *Gayo v. Verceles*, G.R. No. 150477, February 28, 2005, 452 SCRA 504.

[8] **SEC. 1.** *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

relation to Section 3,[9] Rule 46 thereof, explicitly requires that a petition for *certiorari* shall be verified and accompanied by a sworn certification of non-forum shopping. The last paragraph of Section 3, Rule 46 unequivocally states that a petitioner's failure to comply with these requirements shall be sufficient ground for the dismissal of the petition.

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[9] **SEC. 3.** *Contents and filing of petition; effect of non-compliance with requirements*. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit, together with the petition, a sworn certification that he has not theretofor commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

The foregoing misstep, taken together with petitioners' violation of the rule on hierarchy of courts, contrary to petitioners' misleading presentation of issues, cannot be cured by simply invoking motherhood statements like substantial justice. Moreover, the application of Section 6,[10] Rule 1 of the Rules of Court, on the liberal construction of the rules, is not warranted upon a scrutiny of petitioners' claims. Our holding in *Alonso v. Villamor*[11] remains good law:

> No one has been misled by the error in the name of the party plaintiff. If we should, by reason of this error, send this case back for amendment and new trial, there would be on the retrial the same complaint, the same answer, the same defense, the same interests, the same witnesses, and the same evidence. The name of the plaintiff would constitute the only difference between the old trial and the new. In our judgment, there is not enough in a name to justify such action.
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> x x x x x x x x x
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> The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. **Its presentation as fatal to the plaintiff's case smacks of skill rather than right.** A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. No litigant should be permitted to challenge a record of a court of these Islands for defect of form when his substantial rights have not been prejudiced thereby.

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[10] **SEC. 6.** *Construction*. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[11] 16 Phil. 315, 321 (1910).

In fine, petitioners have not proffered sufficient justification, much less, demonstrated merit to the substance of their claims, as would exempt it from the procedural requirements in the filing of a petition for *certiorari* set forth in the Rules of Court.

WHEREFORE, premises considered, the petition is *DENIED DUE COURSE*. The Resolutions of the Court of Appeals in CA-G.R. SP No. 71170 are hereby *AFFIRMED*. The Order dated June 30, 2000 of the Regional Trial Court issuing a Writ of Execution is likewise *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158621. December 10, 2008]

ROYAL CARGO CORPORATION, *petitioner, vs.* **DFS SPORTS UNLIMITED, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW. — An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. On the other hand, an issue is one of law when the doubt or difference arises as to what the law is on a certain state of facts.

2. ID.; ID.; ID.; QUESTIONS OF FACT, NOT ALLOWED; EXCEPTIONS. — The settled rule is that issues of fact are not proper subjects of a petition for review before this Court. Nonetheless, there are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on specudlations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; *(4) the judgment is based on a misapprehension of facts;* (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. The Court finds that petitioner was able to demonstrate that the instant case falls under the fourth exception as will be discussed forthwith.

3. ID.; EVIDENCE; BURDEN OF PROOF; ON THE ISSUE OF PAYMENT. — The settled rule is that one who pleads payment has the burden of proving it. Even where the creditor alleges non-payment, the general rule is that the *onus* rests on the debtor to prove payment, rather than on the creditor to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence — as distinct from the general burden of proof — shifts to the creditor, who is then under a duty of producing some evidence to show non-payment. Settled is the rule that in the course of trial in a civil case, once the plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of the plaintiff. In the instant case, respondent's indebtedness to petitioner has been established. However, respondent failed to meet its burden of proving payment. Hence, judgment must be rendered in petitioner's favor.

4. ID.; CIVIL PROCEDURE; PLEADINGS; DEFENSES AND OBJECTIONS NOT PLEADED; FAILURE IN CASE AT BAR TO RAISE DEFENSE OF PAYMENT IN ANSWER, EVIDENCE THEREFORE ADMITTED IN CONSONANCE WITH THE RULE ON AMENDMENT TO CONFORM TO OR AUTHORIZE PRESENTATION OF EVIDENCE. — Section 1, Rule 9 of the Rules of Court provides: Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim. In the present case, despite failure of the respondent to raise the defense of payment in its answer, the trial court cannot be faulted for admitting the testimonial and documentary evidence of respondent to prove payment, over the objection of petitioner. The trial court's action is in consonance with Section 5, Rule 10 of the Rules of Court, to wit: Section 5. Amendment to conform to or authorize presentation of evidence. — When 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. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. Interpreting Section 4, Rule 17 of the Rules of Court prior to its amendment in 1997, the provisions of which were essentially the same as the above quoted Section 5, Rule 10, the Court in *Co Tiamco v. Diaz* held that: x x x when evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence

would prejudice him in maintaining his defense upon the merits, and the court may grant him continuance to enable him to meet the new situation created by the evidence. The above pronouncement was reiterated in the more recent case of *Ong v. Court of Appeals.* In the instant case, there is no showing that the admission of respondent's evidence would unduly prejudice petitioner in maintaining his claims. Besides, petitioner was given ample opportunity to refute the evidence presented by respondent. Furthermore, even if respondent's answer was not amended to conform to the evidence it presented, it does not preclude the trial court from adjudicating the issue of payment. This Court held in Mercader v. Development Bank of the Philippines (Cebu Branch) that: The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. *The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually amended.* x x x Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, *so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.* This principle is in consonance with the one enunciated by the Court in *Sy v. Court of Appeals*, that where there is a variance in the defendant's pleadings and the evidence adduced at the trial, the court may treat the pleading as amended to conform to the evidence.

5. ID.; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; DUPLICATE COPIES CONSIDERED AS ORIGINAL COPIES OF INVOICES. — The RTC correctly

admitted Exhibits "A" to "A-33" in its Order dated August 1, 1997. Contrary to the claim of respondent that these pieces of evidence presented by petitioner to prove respondent's indebtedness are mere duplicate copies, the same are considered as original copies because they are carbon copies of the invoices which are in the possession of respondent and they may be introduced in evidence without accounting for the non-production of the other copies. Hence, they serve as sufficient proof of the indebtedness of respondent.

6. **ID.; ID.; ID.; INVOICE; ELUCIDATED. —** An invoice or bill is a commercial document issued by a seller to the buyer indicating the products, quantities and agreed prices for product or services the seller has provided the buyer. An invoice indicates the buyer must pay the seller according to the payment terms. From the point of view of a seller, an invoice is a sales invoice. From the point of view of a buyer, an invoice is a purchase invoice. The document indicates the buyer and seller, but the term "invoice" indicates money is owed or owing. The contest of the term "invoice" is usually used to clarify its meaning, such as "We sent them an invoice" (they owe us money) or "We received an invoice from them" (we owe them money).

7. **ID.; ID.; ID.; ID.; DISTINGUISHED FROM RECEIPT. —** In *Commissioner of Internal Revenue v. Manila Mining Corporation*, "sales or commercial invoice" is defined as a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. On the other hand, the same case defines "receipt" as a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services, and client or customer. Black's Law Dictionary defines an invoice as an itemized list of goods or services furnished by a seller to a buyer, usually specifying the price and terms of a sale; a bill of costs. From the foregoing definitions, an invoice, in and by itself, and as opposed to a receipt, may not be considered evidence of payment. In addition, it does not mean that possession by a debtor of an invoice raises the presumption that it has already paid its obligation. An invoice is simply a

list sent to a puchaser, factor, consignee, etc., containing the items, together with the prices and charges, of merchandise sent or to be sent to him; a mere detailed statement of the nature, quantity and cost or price of the things invoiced.

8. CIVIL LAW; DAMAGES; INTEREST PROPER IN CASE AT BAR. — In the present case, respondent's obligation does not constitute a loan or forbearance of money. Hence, the principal amount owed to petitioner shall earn interest of 6% *per annum* to be computed from the time extrajudicial demand for payment was made on February 10, 1995 until finality of this decision. Thereafter, the amount due shall earn interest of 12% *per annum* computed from such finality until the same is fully paid.

9. ID.; ID.; ATTORNEY'S FEES; CASE AT BAR. — The award of attorney's fees depends on the circumstances of each case and lies within the discretion of the court. They may be awarded when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act by the other party. In the instant case, the Court finds that petitioner is entitled to attorney's fees. First, Article 2208 (2) of the Civil Code provides that attorney's fees may be recovered in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Second, there is a stipulation in the subject invoices allowing petitioner to recover attorney's fees in case it is compelled to file an action to enforce collection. Third, Article 2208 (5) of the same Code provides that attorney's fees may also be recovered where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. In the instant case, it is established that respondent's refusal to satisfy petitioner's claim is unreasonable and is, in fact, without basis which compelled petitioner to resort to the instant case to recover what is due it. The subject invoices stipulate that in case of judicial proceedings to enforce collection, respondent shall pay petitioner an amount equivalent to not less than 20% of the amount due for and as attorney's fees, in addition to costs of suit. However, the Court finds that the rate of 20% is excessive. Accordingly, the award for attorney's fees is reduced to a more reasonable rate of 10% of the total amount due.

APPEARANCES OF COUNSEL

Marilyn P. Cacho for petitioner.
Misa Gonzales Law Offices for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 61800 promulgated on January 24, 2003, and its Resolution, dated June 4, 2003, denying petitioner's Motion for Reconsideration.

The facts of the case, as summarized by the trial court and adopted by the CA, are as follows:

> From the evidence offered by the parties and their admissions in their respective pleadings, the Court has clearly gathered that the plaintiff [herein petitioner] and the defendant [herein respondent] are domestic corporations organized under the laws of the Philippines. [Petitioner] is an international freight forwarder, which offers trucking, brokerage, storage and other services to the public, and serves as conduit between shippers, consignees, and carriers for the transportation of cargos from one point of the globe to another. [Respondent], on the other hand, is one of the concessionaires of the Subic Bay Metropolitan Authority (SBMA). It is principally engaged in the importation and local sale of duty-free sporting goods and other similar products.
>
> Sometime in October 1993, the [respondent] engaged the services of the [petitioner] to attend and undertake the former's brokerage and trucking requirements.
>
> Between the period from April to July, 1994 [petitioner] rendered trucking, brokerage, storage and other services to the [respondent] in connection with the latter's importation business, and as a consequence it incurred expenses for brokerage forms, stamps,

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[1] Penned by Justice Andres B. Reyes, Jr. with the concurrence of Justices Delilah Vidallon-Magtolis and Regalado E. Maambong, *rollo*, p. 29.

notarial fees, arrastre charges, wharfage fees, storage charges, guarding fees, telegrams, LCL charges, photostat copies, trucking charges, processing fees, ocean freight charges, collection fees, brokerage fees, insurance premiums, and 10% VAT, which amounted to the total of ₱248,449.63, which the [respondent] fails and refuses to pay despite [petitioner's] demands.[2]

On April 19, 1995, petitioner filed against respondent a Complaint for Collection of Sum of Money[3] with the Regional Trial Court (RTC) of Manila seeking the recovery of the amount of ₱248,449.63 plus legal interest as well as attorney's fees and costs of suit.

Respondent filed its Answer with Counterclaim[4] contending that, except for a single occasion which happened sometime in May 1994, it never engaged the services of petitioner for the importation of various products and that it is under no legal obligation to heed the demand of plaintiff. As counterclaim, respondent alleged that petitioner owes it the sum of ₱200,000.00 representing the value of the imported goods respondent lost by reason of the gross negligence as well as illegal activities of petitioner in the transshipment of respondent's goods. Respondent also sought to recover the amount of ₱44,710.00 which it gave to petitioner as payment of the taxes and customs duties for the goods it (respondent) imported but which were not paid by petitioner. Respondent prayed for the grant of actual, moral and exemplary damages as well as attorney's fees and cost of suit.

Petitioner filed its Answer to respondent's Counterclaim denying the allegations contained therein.[5]

Subsequently, the parties filed their respective Pre-Trial Briefs.[6] Pre-trial conferences were conducted on October 12, 1995 and March 14, 1997.

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[2] Records, Vol. I, pp. 456-457.

[3] *Id.* at 1.

[4] *Id.* at 43.

[5] Records, p. 63.

[6] *Id.* at 68, 112.

Thereafter, trial ensued.

In the course of the trial, the parties made their respective formal offers of evidence.

Petitioner presented as part of its evidence, 34 carbon copies of invoices, marked as Exhibits "A" to "A-33," to prove respondent's indebtedness.[7] These were objected to by respondent on the ground that they are self-serving, immaterial and have no factual and legal basis. However, they were admitted by the RTC per its Order[8] dated August 1, 1997.

On the other hand, respondent presented, 28 original copies of the 34 invoices submitted by petitioner[9] for the purpose of proving payment of the amount sought to be recovered by the latter. Petitioner objected on the ground that the evidence contradicts respondent's claim in its Answer that it never engaged the services of petitioner for the importation of various products. In its Order[10] dated January 30, 1998, the RTC admitted the above-mentioned invoices as part of the evidence for the respondent.

On June 3, 1998, the RTC of Manila, Branch 35, rendered a Decision[11] dismissing petitioner's complaint and respondent's counterclaim.

Petitioner filed an appeal with the CA. Respondent did not appeal the RTC Decision.

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[7] Folder of Exhibits for the Plaintiff, *id.*, Vol. II, pp. 24-57.

[8] *Id.*, Vol. I, p. 318.

[9] Marked as Exhibits "8-B", "8-F", "8-H", "8-I", "8-J", "8-W", "8-X", "8-AAA", "8-BBB", "8-QQQ", "8-RRR", "8-AAAA", "8-BBBB", "8-KKKK", "8-LLLL", "8-EEEEE", "8-FFFFF", "8-PPPPP", "8-QQQQQ", "8-BBBBBB", "8-HHHHHH", "8-IIIIII", "8-VVVVVV", "8-WWWWWW", "8-KKKKKKK", "8-LLLLLLL", "8-ZZZZZZZ", "8-AAAAAAAA", Folder of Exhibits for the Defendant, *id.*, Vol. III.

[10] *Id.*, Vol. I, p. 424.

[11] Records, p. 456.

On January 24, 2003, the CA rendered the presently assailed Decision[12] affirming the RTC Decision.

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its Resolution[13] dated June 4, 2003.

Hence, the present petition raising the following issues:

I. WHETHER OR NOT THE BURDEN OF EVIDENCE LIES WITH THE DEBTOR TO PROVE THAT PAYMENT HAS BEEN MADE.

II. WHETHER OR NOT MERE PRESENTATION BY THE DEBTOR OF ORIGINAL INVOICES ALONE SUFFICIENTLY PROVES PAYMENT OF ITS DEBT.

III WHETHER OR NOT AN INVOICE IS DEEMED A CREDIT INSTRUMENT WHICH, UPON PRESENTATION BY THE DEBTOR, RAISES THE DISPUTABLE PRESUMPTION OF PAYMENT AS PER RULE 131, SECTION 3(h) OF THE RULES OF COURT THAT STATES THAT A DISPUTABLE PRESUMPTION OF PAYMENT IS RAISED WHEN AN OBLIGATION IS DELIVERED TO A DEBTOR.[14]

Petitioner contends that the CA erred in ruling that the burden of evidence is on petitioner who claims that respondent failed to pay its obligation to the former; that, on the contrary, the burden of proving payments lies with respondent, consistent with the rule that one who pleads payment has the burden of proving it; that, in the instant case, respondent's presentation of the original invoices in its possession is not sufficient to prove payment of its debt; that the original invoices are mere evidence of the transaction between petitioner and respondent but can never be relied upon as proof of payment; that the best proof of payment is either a receipt, return check, bank record or document proving that the creditor received the amount owed; that the disputable presumption that an obligation delivered

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[12] CA *rollo*, p. 77.

[13] *Id.* at 101.

[14] *Rollo*, p. 13.

up to a debtor is paid applies only to credit instruments delivered to the debtor; that an invoice is not a credit instrument.

Respondent counters that the issues raised by petitioner are factual; the factual findings of the RTC, especially when affirmed by the CA, are conclusive upon the parties, and; in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Supreme Court only reviews errors of law and not of fact.

The Court finds the petition meritorious.

The Court shall deal first with the question of whether the issues raised by petitioner are factual.

An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[15] On the other hand, an issue is one of law when the doubt or difference arises as to what the law is on a certain state of facts.[16]

In the present case, the main issues raised by petitioner are: (1) whether respondent, who is the debtor, has the burden of proving payment; and (2) whether the subject invoices prove such payment or at least raise a disputable presumption that payment has been made. Clearly, the first issue is not factual as it does not require calibration of evidence. However, the second issue is factual because it requires an examination of the probative value of the evidence of the parties.

The settled rule is that issues of fact are not proper subjects of a petition for review before this Court.[17] Nonetheless, there

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[15] *Citibank, N.A. v. Jimenez, Sr.*, G.R. No. 166878, December 18, 2007, 540 SCRA 573, 582.

[16] *Id.*

[17] *CGP Transportation and Services Corporation v. PCI Leasing and Finance, Incorporated*, G.R. No. 164547, March 28, 2007, 519 SCRA 314, 324.

are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; **(4) the judgment is based on a misapprehension of facts;** (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[18] The Court finds that petitioner was able to demonstrate that the instant case falls under the fourth exception as will be discussed forthwith.

As to the first issue raised, the settled rule is that one who pleads payment has the burden of proving it.19 Even where the creditor alleges non-payment, the general rule is that the *onus* rests on the debtor to prove payment, rather than on the creditor to prove non-payment.[20] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[21] Where the debtor introduces some evidence of payment, the burden of going forward with the evidence — as distinct from the general burden of proof — shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.[22]

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[18] *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, December 19, 2007, 541 SCRA 61, 74-75.

[19] *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 418.

[20] *Coronel v. Capati*, G.R. No. 157836, May 26, 2005, 459 SCRA 205, 213.

[21] *Id*; *Citibank, N.A. v. Sabeniano*, G.R. No. 156132, *supra* note 19.

[22] *G & M (Phils.), Inc. v. Cruz*, G. R. No. 140495, April 15, 2005, 456 SCRA 215, 222.

Since respondent claims that it had already paid petitioner for the services rendered by the latter, it follows that the former carries the burden of proving such payment.

This brings us to the second issue.

At the outset, it should be noted that respondent's defense of payment was only raised during the testimony of its first witness, Adora Co (Adora) on August 7, 1997. In its Answer, respondent merely alleged that, except for a transaction it had with petitioner sometime in May 1994, it never engaged the services of the latter for the importation of various products between April and July 1994; and that for the goods it imported in May 1994, it had given petitioner the amount of ₱44,710.00 to answer for the customs duties and taxes due thereon. Respondent further asserted that the goods were seized by Customs authorities because of petitioner's alleged falsification of receipts covering the payment of customs duties and taxes on the said goods; that by reason of such seizure, the goods, which were kept in open air, lost their commercial value amounting to ₱200,000.00. Respondent claims that it was not able to recover the value of its seized property nor did petitioner return the amount of ₱44,710.00 given to it by respondent.

Moreover, it is significant to note that the only issues raised by respondent in its Pre-Trial Brief are the following:

(a) Has plaintiff (herein petitioner) been engaged by defendant (herein respondent) at any time prior to the filing of the present Complaint in the "importation of various products"?

(b) Is [petitioner] guilty of gross negligence on account of the seizure of [respondent's] products due to fake or spurious receipt of payment of customs duties and taxes?

(c) Is [petitioner] liable to refund [respondent] the amount of ₱44,710.00, received by the former from the latter for the payment of customs duties and taxes assessed on said imported goods?

(d) Is [petitioner] liable to reimburse the amount of ₱44,710.00 to [respondent] after the latter has paid the said amount to the Bureau of Customs for the release of the imported goods which [petitioner] undertook to release and deliver to [respondent's] customer in Makati City? and

(e) Is [petitioner] liable to defendant for damages and attorney's fees incurred by the latter due to [petitioner's] gross negligence?[23]

Nowhere in its Answer or in its Pre-Trial Brief did respondent raise the defense that it had already paid petitioner its obligations. As earlier mentioned, respondent denied having entered into the subject transactions for which petitioner seeks payment. To repeat, it was only during the testimony of respondent's witness, Adora, that respondent claimed payment by presenting in evidence 28 original copies of the subject invoices which Adora claimed to have found two days before she was due to testify in court.

Preliminarily, it is necessary to discuss the effect of failure of petitioner to plead payment of its obligations.

Section 1, Rule 9 of the Rules of Court provides:

> Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim.

In the present case, despite failure of the respondent to raise the defense of payment in its answer, the trial court cannot be faulted for admitting the testimonial and documentary evidence of respondent to prove payment, over the objection of petitioner. The trial court's action is in consonance with Section 5, Rule 10 of the Rules of Court, to *wit*:

> Section 5. Amendment to conform to or authorize presentation of evidence. — When 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. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made

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[23] Defendant's Pre-Trial Brief, records, Vol. I, pp. 114-115.

upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

Interpreting Section 4, Rule 17 of the Rules of Court prior to its amendment in 1997, the provisions of which were essentially the same as the above-quoted Section 5, Rule 10, the Court in *Co Tiamco v. Diaz*[24] held that:

x x x when evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits, and the court may grant him continuance to enable him to meet the new situation created by the evidence.[25]

The above pronouncement was reiterated in the more recent case of *Ong v. Court of Appeals*.[26]

In the instant case, there is no showing that the admission of respondent's evidence would unduly prejudice petitioner in maintaining his claims. Besides, petitioner was given ample opportunity to refute the evidence presented by respondent.

Furthermore, even if respondent's answer was not amended to conform to the evidence it presented, it does not preclude the trial court from adjudicating the issue of payment. Citing of *Bank of America, NT & SA v. American Realty Corporation*[27] and *Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores*

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[24] 75 Phil. 672 (1946).

[25] *Id.* at 679.

[26] G.R. No. 144581, July 5, 2002, 384 SCRA 139, 146.

[27] G.R. No. 133876, December 29, 1999, 321 SCRA 659, 680-681.

de Talisay-Silay, Inc.,[28] this Court held in *Mercader v. Development Bank of the Philippines (Cebu Branch)29* that:

> The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. **The court may treat the pleading as *if* it had been amended to conform to the evidence, although it had not been actually amended**. x x x Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, **so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it**.[30] (Emphasis supplied)

This principle is in consonance with the one enunciated by the Court in *Sy v. Court of Appeals*,[31] that where there is a variance in the defendant's pleadings and the evidence adduced at the trial, the court may treat the pleading as amended to conform to the evidence.

The next question is: whether the evidence presented by respondent supported its claim of payment.

First, the Court does not agree with the finding of the CA that petitioner no longer questioned the ruling of the RTC

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[28] G.R. No. 91852, August 15, 1995, 247 SCRA 361, 377-378.

[29] G.R. No. 130699, May 12, 2000, 332 SCRA 82.

[30] *Mercedes v. Development Bank of the Philippines*, *supra* note 29.

[31] G.R. No. 124518, December 27, 2007, 541 SCRA 371, 387; *National Power Corporation v. Court of Appeals*, No. L-43814, April 16, 1982, 113 SCRA 556, 572.

regarding the probative value of the duplicate copies of the invoices presented in evidence by petitioner, more specifically the six invoices marked as Exhibits "A-2," "A-5," "A-30," "A-31," "A-32" and "A-33," the original copies of which were not produced by respondent as part of its evidence. A perusal of petitioner's appeal brief shows that petitioner specifically raised the issue of whether the RTC erred in failing to accord evidentiary weight to the invoices presented in evidence by petitioner.

Moreover, the RTC correctly admitted Exhibits "A" to "A-33" in its Order dated August 1, 1997.[32] Contrary to the claim of respondent that these pieces of evidence presented by petitioner to prove respondent's indebtedness are mere duplicate copies, the same are considered as original copies because they are carbon copies of the invoices which are in the possession of respondent and they may be introduced in evidence without accounting for the non-production of the other copies.[33] Hence, they serve as sufficient proof of the indebtedness of respondent.

Respondent's main evidence consists of 28 original copies of invoices showing the transactions that it had with petitioner. Stamped on the face of each original invoice are the words "PAID" and "AUDITED," duly initialed.

Are these original invoices sufficient to prove payment or, at the least, do the same raise a disputable presumption that respondent had indeed discharged its obligations to petitioner? The Court rules in the negative.

An invoice or bill is a commercial document issued by a seller to the buyer indicating the products, quantities and agreed prices for product or services the seller has provided the buyer.[34] An invoice indicates the buyer must pay the seller according to the payment terms.[35] From the point of view of a seller, an

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[32] Records, p. 318.

[33] See *Mahilum v. Court of Appeals*, No. L-17970, June 30, 1966, 17 SCRA 482, 486.

[34] <http://en.wikipedia.org/wiki/Invoice> (visited October 16, 2008).

[35] *Id*.

invoice is a sales invoice.[36] From the point of view of a buyer, an invoice is a purchase invoice.[37] The document indicates the buyer and seller, but the term "invoice" indicates money is owed or owing.[38] The context of the term "invoice" is usually used to clarify its meaning, such as "We sent them an invoice" (they owe us money) or "We received an invoice from them" (we owe them money).[39]

In *Commissioner of Internal Revenue v. Manila Mining Corporation*,[40] "sales or commercial invoice" is defined as a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. On the other hand, the same case defines "receipt" as a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services, and client or customer.[41]

Black's Law Dictionary[42] defines an invoice as an itemized list of goods or services furnished by a seller to a buyer, usually specifying the price and terms of a sale; a bill of costs.

From the foregoing definitions, an invoice, in and by itself, and as opposed to a receipt, may not be considered evidence of payment. In addition, it does not mean that possession by a debtor of an invoice raises the presumption that it has already paid its obligation. An invoice is simply a list sent to a purchaser, factor, consignee, *etc*., containing the items, together with the

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[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] G.R. No. 153204, August 31, 2005, 468 SCRA 571, 590.

[41] *Commissioner of Internal Revenue v. Manila Mining Corporation*, *supra* note 40.

[42] Edited by Bryan A. Garner, Eighth Edition, 2004, p. 846; An invoice or bill.

prices and charges, of merchandise sent or to be sent to him; a mere detailed statement of the nature, quantity and cost or price of the things invoiced.[43]

A close examination of the invoices reveals that the words "PAID" and "AUDITED" were stamped on each of them. However, Adora, who is an employee of respondent in charge of all paid accounts, testified that the word "PAID" were stamped on the documents by the accounting department of respondent and not by the petitioner, and that the word "AUDITED" was stamped by respondent's auditor.[44] This is not rebutted by respondent. Thus, the Court finds that the trial court committed a serious error in appreciating the evidence when it discredited petitioner's claim that its purpose in sending the subject invoices to respondent was only to collect the latter's debt, not to evidence payment by the latter.

Furthermore, respondent's defense of payment is made more untenable by its failure to present any supporting evidence, such as official receipts or the testimony of its employee who actually paid or the one who had direct knowledge of the payment allegedly made in petitioner's favor, to prove that it had indeed paid its obligations to the latter. Respondent is a corporation engaged in the business of importation and local sale of duty-free sporting goods and similar products. It is presumed that it takes ordinary care of its concerns. In fact, as part of its evidence, respondent presented Official Receipt No. 52715[45] for the amount of ₱4,472.00 which it paid as advance freight payment in favor of petitioner. Respondent also presented other copies of official receipts for payments it made to another company, PAC-Atlantic Lines (Philippines) Inc. for the amounts of ₱10,152.12 and ₱21,144.92, respectively.[46] On this basis, it is difficult to see why respondent did not present any receipt or at least show

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[43] 48 *Corpus Juris Secundum*, p. 764.

[44] See TSN, August 7, 1997, pp. 42-50.

[45] Exhibit "8-JJ", Folder of exhibits for the defendant, p.36.

[46] See Exhibits "8-TTTTT", "8-BBBBBBBB", Folder of exhibits for the defendant, pp. 148 and 209.

that it had demanded an official receipt as proof of its payment with respect to the 34 transactions for which payment is being claimed by petitioner. Some of the amounts involved in said transactions were larger than the payments respondent made for which it was issued official receipts. Respondent's witness, Adora, failed to sufficiently explain why it did not have receipts in its possession to prove payment. The witness simply reasoned out that even in the absence of any receipt, she assumed that an account was paid once the accounting department of respondent forwarded to her the original invoice which was stamped "PAID."[47] Such testimony, as well as the invoices which were stamped paid, are all self-serving and do not, by themselves, prove respondent's claim of payment.

Settled is the rule that in the course of trial in a civil case, once the plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of the plaintiff.[48] In the instant case, respondent's indebtedness to petitioner has been established. However, respondent failed to meet its burden of proving payment. Hence, judgment must be rendered in petitioner's favor.

Aside from the principal amount of ₱248,449.63, petitioner also seeks recovery of interests thereon. As to computation of legal interest, the seminal ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[49] controls, to wit:

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II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

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[47] TSN, August 7, 1997, pp. 13-15.

[48] *Prudential Guarantee and Assurance Inc. v. Trans-Asia Shipping Lines, Inc.*, G.R. No. 151890, June 20, 2006, 491 SCRA 411, 433.

[49] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

1. When an obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[50]

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[50] *Id.* at 95-97.

In the present case, respondent's obligation does not constitute a loan or forbearance of money. Hence, the principal amount owed to petitioner shall earn interest of 6% *per annum* to be computed from the time extrajudicial demand for payment was made on February 10, 1995[51] until finality of this decision. Thereafter, the amount due shall earn interest of 12% *per annum* computed from such finality until the same is fully paid.

The award of attorney's fees depends on the circumstances of each case and lies within the discretion of the court.[52] They may be awarded when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act by the other party.[53]

In the instant case, the Court finds that petitioner is entitled to attorney's fees. First, Article 2208 (2) of the Civil Code provides that attorney's fees may be recovered in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Second, there is a stipulation in the subject invoices allowing petitioner to recover attorney's fees in case it is compelled to file an action to enforce collection. Third, Article 2208 (5) of the same Code provides that attorney's fees may also be recovered where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. In the instant case, it is established that respondent's refusal to satisfy petitioner's claim is unreasonable and is, in fact, without basis which compelled petitioner to resort to the instant case to recover what is due it.

The subject invoices stipulate that in case of judicial proceedings to enforce collection, respondent shall pay petitioner an amount

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[51] See demand letter, Folder of Exhibits for the Plaintiff, orig. records, Vol. II. p. 55.

[52] *Pilipinas Shell Petroleum Corporation v. John Bordman, Ltd. of Iloilo, Inc*., G.R. No. 159831, October 14, 2005, 473 SCRA 151, 175.

[53] *Mercury Drug Corporation v. Huang*, G.R. No. 172122, June 22, 2007, 525 SCRA 427, 442-443.

equivalent to not less than 20% of the amount due for and as attorney's fees, in addition to costs of suit. However, the Court finds that the rate of 20% is excessive. Accordingly, the award for attorney's fees is reduced to a more reasonable rate of 10% of the total amount due.[54]

WHEREFORE, the petition for review is *GRANTED*. The Decision dated January 24, 2003 and the Resolution of June 4, 2003 of the Court of Appeals as well as the Decision of the Regional Trial Court dated June 3, 1998 are REVERSED and SET ASIDE. Respondent is ORDERED to pay petitioner: (1) the amount of Two Hundred Forty-Eight Thousand Four Hundred Forty-Nine Pesos and Sixty-Three Centavos (₱248,449.63) plus legal interest of 6% *per annum* from February 10, 1995 until this Decision becomes final and executory; (2) the legal interest of 12% *per annum* on the total amount due from such finality until fully paid; (3) 10% of the total amount due as and by way of attorney's fees, and (4) the costs of suit.

SO ORDERED.

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

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[54] *Santiago v. CF Sharp Crew Management, Inc.*, G.R. No. 162419, July 10, 2007, 527 SCRA 165, 180.

THIRD DIVISION

[G.R. No. 163156. December 10, 2008]

NEGROS NAVIGATION CO., INC., *petitioner, vs.* **COURT OF APPEALS, SPECIAL TWELFTH DIVISION AND TSUNEISHI HEAVY INDUSTRIES (CEBU), INC.,** *respondents.*

[G.R. No. 166845. December 10, 2008]

TSUNEISHI HEAVY INDUSTRIES (CEBU), INC., *petitioner, vs.* **NEGROS NAVIGATION CO., INC., SULFICIO O. TAGUD, JR., AND THE REHABILITATION RECEIVER FOR NEGROS NAVIGATION CO., INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; PD 1521 (SHIP MORTGAGE DECREE OF 1978), THE LAW APPLICABLE ON MARITIME LIEN FOR SERVICES RENDERED TO NEGROS NAVIGATION CO. (NNC) IN CASE AT BAR; EFFECT OF PETITION FOR CORPORATE REHABILITATION AND SUSPENSION OF PAYMENTS. — PD 1521 is the governing law concerning its maritime lien for the services it rendered to NNC. However, when NNC filed a petition for corporate rehabilitation and suspension of payments, and the Manila RTC found that the petition was sufficient in form and in substance and appointed the rehabilitation receiver, the admiralty proceeding was appropriately suspended in accordance with Section 6 of the Interim Rules on Corporate Rehabilitation.

2. ID.; CORPORATION LAW; REHABILITATION; ELUCIDATED. — Rehabilitation contemplates continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits

its employees, creditors, stockholders and, in a larger sense, the general public.

3. ID.; ID.; PD 902-A ON CORPORATE REHABILITATION AND SUSPENSION OF ACTIONS FOR CLAIMS; RA 8799 (SECURITIES REGULATION CODE) ON JURISDICTION THEREOF. — The governing law concerning rehabilitation and suspension of actions for claims against corporations is PD 902-A, as amended. Republic Act No. 8799 (RA 8799), otherwise known as The Securities Regulation Code, amended Section 5 of PD 902-A, thereby transferring to the Regional Trial Courts the jurisdiction of the Securities and Exchange Commission (SEC) over cases, among others, involving petitions of corporations, partnerships or associations to be declared in the state of suspension of payments where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due, or where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or a management committee. The Court adopted the Interim Rules of Procedure on Corporate Rehabilitation on December 15, 2000, and these rules apply to petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to PD 902-A.

4. ID.; ID.; ID.; CLAIMS COVERED BY SUSPENSION THEREOF; NO EXCEPTION MADE IN FAVOR OF MARITIME CLAIMS. — PD 902-A mandates that upon appointment of a management committee, rehabilitation receiver, board or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended. PD 902-A does not make any distinction as to what claims are covered by the suspension of actions for claims against corporations under rehabilitation. No exception is made therein in favor of maritime claims. Thus, since the law does not make any exemptions or distinctions, neither should we. *Ubi lex non distinguit nec nos distinguere debemos.* The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial

or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

5. ID.; ID.; ID.; ID.; ID.; PREFERRED MARITIME LIEN OVER CORPORATE ASSETS ON UNPAID SERVICES, NOT AFFECTED. — It is undisputed that THI holds a preferred maritime lien over NNC's assets by virtue of THI's unpaid services. The issuance of the stay order by the rehabilitation court does not impair or in any way diminish THI's preferred status as a creditor of NNC. The enforcement of its claim through court action was merely suspended to give way to the speedy and effective rehabilitation of the distressed shipping company. Upon termination of the rehabilitation proceedings or in the event of the bankruptcy and consequent dissolution of the company, THI can still enforce its preferred claim upon NNC.

6. ID.; ID.; ID.; PURPOSE; TO SALVAGE AILING CORPORATION AND TO PROTECT THE INTEREST OF INVESTORS, CREDITORS AND THE GENERAL PUBLIC. — PD 902-A was designed not only to salvage an ailing corporation but also to protect the interest of investors, creditors and the general public. Section 6 (d) of PD 902-A provides: "the management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the [court]. It shall report and be responsible to the [court] until dissolved by order of the [court]: Provided, however, That the [court] may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings determine that the continuance in business of such corporation

or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary." When a distressed company is placed under rehabilitation, the appointment of a management committee follows to avoid collusion between the previous management and creditors it might favor, to the prejudice of the other creditors. The stay order is effective on all creditors of the corporation without distinction, whether secured or unsecured. All assets of a corporation under rehabilitation receivership are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation threatened by bankruptcy is taken over by a receiver, all the creditors ought to stand on equal footing. Not any one of them should be paid ahead of the others. This is precisely the reason for suspending all pending claims against the corporation under receivership.

7. ID.; ID.; GUIDELINES IN THE TREATMENT OF CLAIMS INVOLVING CORPORATIONS UNDERGOING REHABILITATION. — *Rizal Commercial Banking Corporation v. Intermediate Appellate Court,* promulgated by the Court *en banc* before the effectivity of the Interim Rules on Corporate Rehabilitation, is still valid case law up to the present. It enumerates the guidelines in the treatment of claims involving corporations undergoing rehabilitation, *viz:* 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance with the provisions of Presidential Decree No. 902-A. 2. Secured creditors retain their preference over unsecured creditors, but enforement of such preference is equally suspended upon the appointment of a management

committee, rehabilitation receiver, board, or body. In the event that the assets of the corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.

8. ID.; ID.; PD 902-A HAS NO CONFLICT WITH PD 1521 ON JURISDICTION; REHABILITATION COURT SUSPENDING ADMIRALTY CASE IN ANOTHER COURT IS NOT DIVESTING OF THE LATTER'S JURISDICTION. — THI argues that the Manila RTC, in granting the stay order, divested the Cebu RTC, which is acting as an admiralty court, of its jurisdiction over the maritime case of THI. There is no conflict between PD 1521 and PD 902-A. The Manila RTC acting as a rehabilitation court merely suspended the proceedings in the admiralty case in the Cebu RTC. It did not divest the Ceby RTC of its jurisdiction over the maritime claims of THI against NNC. The preferred maritime lien of THI can still be enforced upon the termination of the rehabilitation proceedings, or if it such be unsuccessful, upon the dissolution of the corporation.

APPEARANCES OF COUNSEL

Jose Songco for Negros Navigation Co., Inc..

Sycip Salazar Hernandez & Gatmaitan for Tsuneishi Heavy Industries, Inc.

Ylagan & Ylagan Law Office for S.O. Tagud, Jr.

D E C I S I O N

NACHURA, *J.*:

Before us are two consolidated cases, docketed as G.R. No. 163156 and G.R. No. 166845, which were filed by petitioners Negros Navigation Co., Inc. (NNC) and Tsuneishi Heavy Industries (Cebu), Inc. (THI), respectively. The first is a petition for *certiorari* and prohibition assailing the April 29, 2004 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 83526. The second is a petition for review on *certiorari*,

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Mariano C. del Castillo and Aurora Santiago-Lagman, concurring; *rollo* (G.R. No. 163156), p. 27.

contesting the October 6, 2004 Decision[2] and January 24, 2005 Resolution[3] of the CA in the same case.

The Facts

The undisputed facts are as follows:

NNC is a shipping company that is primarily engaged in the business of transporting through shipping vessels, passengers and cargoes at various ports of call in the country.[4] THI, on the other hand, is engaged in the business of shipbuilding and repair.[5] NNC engaged the services of THI for the repair of its vessels.

On February 9, 2004, THI filed a case for sum of money and damages with prayer for issuance of writ of attachment against NNC before the Regional Trial Court of Cebu (Cebu RTC), docketed as Civil Case No. CEB-29899 entitled "Tsuneishi Heavy Industries (Cebu), Inc. v. Negros Navigation Co., Inc." The action is based on the unpaid services for the repair of NNC's vessels, otherwise known as repairman's lien.

On March 5, 2004, the Cebu RTC issued an Order[6] granting the issuance of a writ of preliminary attachment against the properties of NNC.[7] It reasoned that based on the affidavit in

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[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Salvador J. Valdez, Jr. and Vicente Q. Roxas; *rollo* (G.R. No. 166845), p. 10-18.

[3] *Id.* at 20- 21.

[4] *Rollo* (G.R. No. 163156), p. 115.

[5] *Rollo* (G.R. No. 166845), p. 153.

[6] *Id.* at. 149.

[7] The *fallo* of the Order reads:

> WHEREFORE, in view of the foregoing, the application for writ for preliminary attachment is hereby granted. Consequently, let a writ of attachment issue, directing the sheriff of this court or other proper officers of the court to attach the properties of defendant, real and personal, not exempt from execution upon the plaintiff's filing first of a bond in the amount of THIRTY-FIVE MILLION FOUR HUNDRED THOUSAND AND SIX HUNDRED FORTY (₱35,464,640.00) PESOS, to be approved by this court, conditioned to answer for all costs and

support of the application for the writ, NNC committed fraud in contracting the debt or in incurring the obligation upon which the action was brought, thus, justifying the issuance of the writ[8] as mandated by Section 1(d) of Rule 57. It added that the repairman's lien of THI constituted a superior maritime lien that is enforceable by suit *in rem*, as decreed by Presidential Decree No. 1521 (PD 1521).[9]

On March 12, 2004, by virtue of the writ of preliminary attachment, Sheriff Rogelio T. Pinar levied on one of the vessels of NNC, the M/V St. Peter the Apostle.[10]

On March 29, 2004, NNC filed a Petition for Corporate Rehabilitation with Prayer for Suspension of Payments[11] with the RTC of Manila (Manila RTC), Branch 46, which was docketed as Special Proceeding No. 0409532. The Manila RTC granted the NNC's petition and issued a Stay Order[12] on April 1, 2004. The said Order reads:

> Petitioner Negros Navigation Co., Inc. filed a Petition alleging that it is a domestic corporation with principal place of business at Pier 2, North Harbor, Tondo, Manila; that since its incorporation, it had been very viable and financially profitable; that because of the Asian Currency Crisis and the devaluation of the Peso, it found itself in difficulty in paying its obligations with creditors; that as a consequence, petitioner foresees its inability to meet its obligations as they fall due; that since the obligations would not be met, complications and problems will arise that will impair and affect the operation of the corporation and its effort to rehabilitate its business; that one of its creditors, Tsuneishi Heavy Industries, Inc.,

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damages which the defendants may sustain by reason of the attachment, should the court finally adjudge that the plaintiff is not entitled thereto.

IT IS SO ORDERED. (*Id.* at 149.)

[8] *Id.* at 50.

[9] Ship Mortgage Decree of 1978.

[10] *Rollo* (G.R. No. 166845), p. 151.

[11] *Rollo* (G.R. No. 163156), pp. 115-128.

[12] *Id.* at 137-139.

already attached one shipping vessel of the corporation; and other creditors are threatening to sue; but despite the foregoing, petitioner still foresee the prospect of paying its debts if only given a "breathing spell." Hence, it is presenting a Rehabilitation Plan for approval of its creditors as well as this Court.

Finding the Petition, together with its annexes, sufficient in form and substance, the Court hereby:

1. Appoints Mr. Sulficio O. Tagud, Jr. as Rehabilitation Receiver with a bond in the amount of PhP150,000.00;

2. Stays the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioner, its guarantors and sureties not solidarily liable with the debtor;

3. Prohibits petitioner from selling, encumbering, transferring, or disposing in any manner any of its properties, except in the ordinary course of business;

4. Prohibits petitioner from making any payment of its liabilities outstanding as of the date of filing of the petition;

5. Prohibits the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order;

6. Directs the payment in full of all administrative expenses incurred after the issuance of the stay order;

7. Fixes the initial hearing of the petition on May 7, 2004 at 8:30 A.M.;

8. Directs petitioner to publish this Order in a newspaper of general circulation throughout the Philippines once a week for two (2) consecutive weeks;

9. Directs all creditors and all interested parties (*including the Securities and Exchange Commission)* to file and serve with the court and on the petitioner a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and

10. Directing the creditors and interested parties to secure from the court copies of the petition and its annexes to enable them to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The Rehabilitation Receiver, Mr. Sulficio O. Tagud, Jr., is requested to submit his oath of office within ten (10) days from receipt of this Order.

IT IS SO ORDERED.[13]

Upon the issuance of the stay order by the Manila RTC, NNC filed a Manifestation and Motion to Suspend Proceedings and to Lift Preliminary Attachment with the Cebu RTC.[14]

On April 5, 2004, THI filed an Amended Complaint[15] in the Cebu RTC. In the amended complaint, THI impleaded the following vessels of NNC as co-defendants in the suit: M/V San Sebastian, M/S Princess of Negros, M/V Nossa Senhora (Nuestra Señora) De Fatima, M/V St. Peter the Apostle, M/V Santa Ana and M/V San Paolo.[16] THI prayed for the following in the amended complaint:

WHEREFORE, it is respectfully prayed that:

1. An *ex-parte* writ of preliminary attachment/arrest order be issued directing the sheriff to attach defendant's properties not exempt from execution as security for the satisfaction of the judgment in this action, and/or arrest the defendant vessels, upon approval by the Court of an appropriate attachment/arrest bond in accordance with the Rules of Court.

2. It is further respectfully prayed that after trial, judgment be rendered in favor of the plaintiff and against the defendant, Negros Navigation ordering the latter to pay the amount of ₱104,464,000.00 plus interest and penalties, and in satisfaction thereof and/or to ensure the same:

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[13] *Id*.

[14] *Rollo* (G.R. No. 166845), p. 12.

[15] *Id.* at 152-160.

[16] *Id*.

a. In the *in personam* action, attaching the assets of defendant Negros Navigation, including the vessel, M/V St. Joseph; and

b. In the *in rem* action, an order/warrant of arrest of the Vessels based on plaintiff's lien which arose from repairs and dry docking furnished by plaintiff to the following:

a)	San Sebastian	-	P 2,212,925.00
b)	Princess of Negros	-	21,389,575.00
c)	Nuestra Sra. De Fatima	-	3,743,250.00
d)	St. Peter the Apostle	-	43,483,000.00
e)	Sta. Ana	-	264,000.00
f)	San Paolo	-	33,371,250.00
	TOTAL		**P104,464,000.00**

be issued ex-parte and, after hearing, judgment be rendered ordering the sale at public action of the Vessels, including all their accessories, equipments, riggings and appurtenances, and, under the manner provided for by law.

3. Attorney's fees in an amount not less than ₱2,000,000.00 plus refund of docket fees, bond premiums and litigation expenses of no less than ₱2,000,000.00.

4. Costs of suit.

Plaintiff prays for such other reliefs, cumulative and/or alternative, as this Honorable Court may deem just and equitable under the premises.[17]

On April 6, 2004, the Cebu RTC issued two (2) Orders. The first was an Order[18] admitting the amended complaint as a matter of right since NNC had not yet filed a responsive pleading when the same was filed. The second was an Order[19] for the arrest

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[17] *Id.* at 157.

[18] *Id.* at 171.

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

of the vessels of NNC in the *in rem* aspect of the case. The *fallo* of the Order reads:

> WHEREFORE, in view of the foregoing, the sheriff, or other proper officers of this court and such other person(s) as they may deputize, is/are hereby directed to arrest and detain the following vessels: M/V San Sebastian, M/S Princess of Negros, M/V Nossa Senhora de Fatima (Nuestra Senora de Fatima), M/V St. Peter the Apostle, M/V Sta. Ana and M/V San Paolo. The Philippine Ports Authority, the Philippine Coast Guard, the Maritime Industry Authority (MARINA), the Philippine National Police, the National Bureau of Investigation and other law enforcement agencies and all other government agencies and instrumentalities are hereby ordered to assist. Assistance shall include but not be limited to preventing the vessel from sailing or trading except as this admiralty court shall direct. Keep the vessels in custody until further order of this court, sitting as an admiralty court.
>
> IT IS SO ORDERED.

On April 12, 2004, NNC's Rehabilitation Receiver filed with the Manila RTC a Motion[20] for the clarification of the stay order. It sought to confirm whether the claim sought to be enforced by THI against the vessels of NNC is covered by the stay order. On the same date, the Manila RTC issued an Order[21] addressing the said motion. The pertinent portion of the Order reads:

> The Interim Rules of Procedure on Corporate Rehabilitation does not distinguish the kind of claims covered, whether in rem or in personam, due or not due. Hence, when the law does not distinguish, courts ought not to distinguish. So the stay order applies to all CLAIMS.
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> SO ORDERED.[22]

On April 13, 2004, NNC filed a Motion to Suspend Proceedings and to Lift the Writ of Attachment and Arrest Orders[23]

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[20] *Rollo* (G.R. No. 163156), pp. 131-132.

[21] *Id.* at 142.

[22] *Id*.

[23] *Id.* at 106-109.

before the Cebu RTC by virtue of the April 12, 2004 Order of the Manila RTC. However, on April 29, 2004, the CA issued the Resolution[24] assailed in what is before this Court as G.R. No. 163156, wherein the appellate court temporarily restrained the implementation of the Orders of the Manila RTC dated April 1, 2004 and April 12, 2004. The pertinent portion of the assailed Resolution reads:

> To preserve the *status quo* and so as not to render ineffectual and nugatory the judgment that will be rendered in this petition, a temporary restraining order valid for sixty (60) days is issued enjoining respondents and all persons acting for them and on their behalf or third persons from enforcing or implementing the Orders dated April 1, 2004 and April 12, 2004 of the public respondent.
>
> SO ORDERED.[25]

From this CA Resolution, NNC sought recourse before us. On May 4, 2004, this Court in G.R. No. 163156 issued a Temporary Restraining Order,[26] the pertinent portion of which reads:

> NOW, THEREFORE, YOU, RESPONDENTS are REQUIRED to file comment on the petition within ten (10) days from notice, and RESTRAINED from implementing the Court of Appeals resolution dated 29 April 2004, which issued a temporary restraining order in CA-GR SP No. 83526 entitled "Tsuneishi Heavy Industries (CEBU), Inc. vs. Hon. Artemio S. Tipon, Presiding Judge, Regional Trial Court, Manila, Br. 46, Negros Navigation Co., Inc. and Sulficio O. Tagud, Jr." enjoining the implementation of the Orders dated 1 April 2004 and 12 April 2004 of the Regional Trial Court of Manila, Br. 46 in SP Proc. No. 04-109532, effective immediately and continuing until further orders from this Court, and YOU, PETITIONER, are ordered to POST a BOND in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) in cash or surety issued by a reputable bonding company of indubitable solvency with terms and conditions acceptable to this Court within five (5) days from notice hereof, otherwise this temporary restraining order shall be rendered of no force and effect.

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[24] *Supra* note 1.

[25] *Id*.

[26] *Id.* at 162-164.

On October 6, 2004, the CA issued the Decision27 assailed in what is now G.R. No. 166845, denying the petition of THI that sought to annul and enjoin the enforcement and implementation of the Orders of the Manila RTC dated April 1, 2004 and April 12, 2004. The *fallo* of the Decision reads:

> WHEREFORE, in view of the foregoing, the instant petition is **DENIED DUE COURSE** and is **DISMISSED** for lack of merit.
>
> SO ORDERED.[28]

THI filed a motion for reconsideration. The same was denied in a Resolution29 dated January 24, 2005. Hence, this petition in G.R. No. 166845.

The Issues

NNC, in G.R. No. 163156, presented the sole issue of whether the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated April 29, 2004 embodying the temporary restraining order which enjoined the implementation of the Orders of the Manila RTC dated April 1, 2004 and April 12, 2004.[30]

On the other hand, THI, in G.R. No. 166845, assigned the following errors in the decision and resolution of the CA:

> A. The CA Decision erred in ruling that neither THI's enforcement/the efficacy of its maritime liens against the Vessels nor the Admiralty Court's jurisdiction over those liens is impaired by the Stay Orders issued by the Manila RTC.[31]

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[27] *Supra* note 2.

[28] *Id*.

[29] *Supra* note 3.

[30] *Rollo* (G.R. No. 163156), pp. 598-599.

[31] *Rollo* (G.R. No. 166845), p. 42.

B. The CA Decision, it is respectfully submitted, gravely erred in ruling that THI's maritime liens are covered by, and are subject to the Manila RTC's jurisdiction in, [NNC's] rehabilitation proceedings.[32]

The Ruling of the Court

In G.R. No. 163156

The issue presented by NNC in G.R. No. 163156 was rendered moot and academic by the promulgation of the CA Decision and Resolution dated October 6, 2004 and January 24, 2005, respectively. We find it unnecessary to discuss it extensively because the arguments presented by NNC and THI in support of their respective positions are, ultimately, the very same issues we now resolve in G.R. No. 166845.

In G.R. No. 166845

On the first issue, THI maintains that its maritime liens against the vessels of NNC were impaired by the issuance of the stay order. THI argues that the issuance of the stay order by the Manila RTC, acting as rehabilitation court, was erroneous considering that maritime liens cannot be enforced, divested, and otherwise affected or dealt with except by an admiralty court in an admiralty proceeding *in rem*. THI cited various foreign jurisprudence to the effect that maritime liens are enforceable only by a suit *in rem*.[33] It further averred that the mere suspension of the *in rem* proceedings in the admiralty case prejudiced its substantive rights under Presidential Decree (PD) 1521.[34]

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[32] *Id.* at 47.

[33] *Id.* at 42-47.

[34] Section 21 of PD 1521 provides:

Section 21. ***Maritime Lien for Necessaries; persons entitled to such lien.*** — Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*, and shall be necessary to allege or prove that credit was given to the vessel."; *rollo* (G.R. No. 166845), p. 46.

The argument of THI is misplaced. There is no conflict as to which law should apply to the case at bench. THI wishes to impress this Court that its claim for repairman's lien is a maritime lien and, accordingly, may be enforced only in a proceeding *in rem*. The Court agrees that PD 1521 is the governing law concerning its maritime lien for the services it rendered to NNC. However, when NNC filed a petition for corporate rehabilitation and suspension of payments, and the Manila RTC found that the petition was sufficient in form and in substance and appointed the rehabilitation receiver, the admiralty proceeding was appropriately suspended in accordance with Section 6 of the Interim Rules on Corporate Rehabilitation.[35]

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[35] INTERIM RULES ON CORPORATE REHABILITATION

SEC. 6. Stay Order.— If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

Rehabilitation contemplates continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.[36] The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.[37]

The governing law concerning rehabilitation and suspension of actions for claims against corporations is PD 902-A, as amended. Republic Act No. 8799 (RA 8799), otherwise known as The Securities Regulation Code, amended Section 5 of PD 902-A, thereby transferring to the Regional Trial Courts the jurisdiction of the Securities and Exchange Commission (SEC) over cases, among others, involving petitions of corporations, partnerships or associations to be declared in the state of suspension of payments where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due, or where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or a management committee.

The Court adopted the Interim Rules of Procedure on Corporate Rehabilitation on December 15, 2000, and these rules apply to petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to PD 902-A.

PD 902-A[38] mandates that upon appointment of a management committee, rehabilitation receiver, board or body, all actions for claims against corporations, partnerships or associations under

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[36] *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City*, G.R. No. 165001, January 31, 2007, 513 SCRA 601; *Ruby Industrial Corporation v. CA*, G.R. Nos. 124185-87, January 20, 1998.

[37] *Rubberworld (Phils.), Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 721.

[38] Section 6(c).

management or receivership pending before any court, tribunal, board or body shall be suspended. PD 902-A does not make any distinction as to what claims are covered by the suspension of actions for claims against corporations under rehabilitation. No exception is made therein in favor of maritime claims. Thus, since the law does not make any exemptions or distinctions, neither should we. *Ubi lex non distinguit nec nos distinguere debemos.*

The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[39]

It is undisputed that THI holds a preferred maritime lien over NNC's assets by virtue of THI's unpaid services. The issuance of the stay order by the rehabilitation court does not impair or in any way diminish THI's preferred status as a creditor of NNC. The enforcement of its claim through court action was merely suspended to give way to the speedy and effective rehabilitation of the distressed shipping company. Upon termination of the rehabilitation proceedings or in the event of the bankruptcy and consequent dissolution of the company, THI can still enforce its preferred claim upon NNC.

PD 902-A was designed not only to salvage an ailing corporation but also to protect the interest of investors, creditors and the

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[39] *Philippine Airlines, Incorporated v. Philippine Airlines Employees Association (PALEA),* G.R. No. 142399, June 19, 2007, 525 SCRA 29; *Philippine Airlines, Incorporated v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584.; *Rubberworld (Phils.), Inc. v. NLRC,* G.R. No. 128003, July 26, 2000, 336 SCRA 433; *Rubberworld (Phils.), Inc. v. NLRC,* G.R. No. 126773, April 14, 1999, *supra*; *BF Homes, Incorporated v. CA*, G.R. No. 76879, October 3, 1990, 190 SCRA 262.

general public. Section 6 (d) of PD 902-A provides: "the management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the [court]. It shall report and be responsible to the [court] until dissolved by order of the [court]: Provided, however, That the [court] may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary."

When a distressed company is placed under rehabilitation, the appointment of a management committee follows to avoid collusion between the previous management and creditors it might favor, to the prejudice of the other creditors. The stay order is effective on all creditors of the corporation without distinction, whether secured or unsecured. All assets of a corporation under rehabilitation receivership are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation threatened by bankruptcy is taken over by a receiver, all the creditors ought to stand on equal footing. Not any one of them should be paid ahead of the others. This is precisely the reason

for suspending all pending claims against the corporation under receivership.[40]

Rizal Commercial Banking Corporation v. Intermediate Appellate Court,[41] promulgated by the Court *en banc* before the effectivity of the Interim Rules on Corporate Rehabilitation, is still valid case law up to the present. It enumerates the guidelines in the treatment of claims involving corporations undergoing rehabilitation, *viz*.:

> 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance with the provisions of Presidential Decree No. 902-A.
>
> 2. Secured creditors retain their preference over unsecured creditors, but enforcement of such preference is equally suspended upon the appointment of a management committee, rehabilitation receiver, board, or body. In the event that the assets of the corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.[42]

On the second issue, THI argues that the Manila RTC, in granting the stay order, divested the Cebu RTC, which is acting as an admiralty court, of its jurisdiction over the maritime case of THI. It insists that its maritime liens over the vessels of NNC must be upheld, notwithstanding NNC's rehabilitation proceedings. It stresses that in *in rem* proceedings to enforce maritime liens, the vessels alone may be impleaded as defendants.

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[40] *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City, supra*; *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, G.R. No. 74851, December 9, 1999, 320 SCRA 279; *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 97178, January 10, 1994, 229 SCRA 223; *BF Homes, Incorporated v. CA, supra*; *Alemar's Sibal & Sons, Inc. v. Elbinias*, G.R. No. 75414, June 4, 1990, 186 SCRA 94.

[41] G.R. No. 74851, December 9, 1999, 320 SCRA 279.

[42] *Id.* at 293.

The vessels themselves answer for the liens, and lienholders like THI have the substantive statutory right under PD 1521 to insist on the vessels' responsibility because an action *in rem* is a proceeding against the ship itself. Furthermore, it emphasizes that a maritime lien is not affected by bankruptcy or reorganization, citing Gilmore and Black as reference.[43]

True enough, a maritime lien is not affected by bankruptcy or reorganization. However, in the instant case, we are not dealing with bankruptcy or reorganization; rather, we are confronted with NNC's rehabilitation. If we follow the argument of THI and allow the continued enforcement of its claims against NNC, we would, in effect, violate provisions of PD 902-A. To reiterate, the rationale behind PD 902-A is to effect a feasible and viable rehabilitation of an ailing corporation.

There is no conflict between PD 1521 and PD 902-A. The Manila RTC acting as a rehabilitation court merely suspended the proceedings in the admiralty case in the Cebu RTC. It did not divest the Cebu RTC of its jurisdiction over the maritime claims of THI against NNC. The preferred maritime lien of THI can still be enforced upon the termination of the rehabilitation proceedings, or if it such be unsuccessful, upon the dissolution of the corporation.

WHEREFORE, in view of the foregoing disquisitions, judgment is rendered as follows:

(1) In G.R. No. 163156, the petition is *DISMISSED* for being moot and academic; and

(2) In G.R. No. 166845, the petition is *DENIED* for lack of merit.

SO ORDERED.

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

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[43] *Rollo* (G.R. No. 166845), pp. 47-60.

SECOND DIVISION

[G.R. No. 171678. December 10, 2008]

ROSA J. SALES, EARL RYAN CHENG and EMIL RALPH CHENG, *petitioners, vs.* **WILLIAM BARRO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NOT THE CASE AT BAR AS OWNER'S PERMISSION OR TOLERANCE NOT PRESENT AT THE BEGINNING OF THE POSSESSION. — There are two reasons why we could not subscribe to the petitioners' submission that their complaint was for unlawful detainer. *Firstly*, the petitioners' own averment in the complaint "*that the defendant constructed a shanty in the lot of the plaintiffs without their consent,*" and the relief asked for by the petitioners that the respondent and his wife "*pay the amount of ₱10,000 a month beginning January 2004 as for reasonable rent of the subject premises*," clearly contradict their claim. It must be highlighted that as admitted by the petitioners in their motion for reconsideration before the appellate court, and as evidenced by the TCT No. 262237 annexed to the complaint, the petitioners became owners of the property only on January 6, 2004. By averring that the respondent constructed his shanty on the lot *without their consent* and then praying that the MeTC direct the respondent to pay them rent from January 2004, or from the inception of the respondent's occupation of the lot, no other conclusion can be made except that the petitioners had always considered respondent's occupation of the same to be unlawful from the very beginning. Hence, the complaint can never support a case for unlawful detainer. "*It is a settled rule that in order to justify an action for unlawful detainer, the owner's permission or tolerance must be present at the beginning of the possession.*"

2. ID.; ID.; FORCIBLE ENTRY; THE CASE AT BAR AS CULLEWD FROM THE ALLEGATIONS IN THE COMPLAINT, BUT THE SAME DEFECTIVE FOR THE MISSING DECLARATION OF PRIOR POSSESSION. —

the nature of the complaint is neither changed nor dependent upon the allegations and/or defenses made in the answer. As we had previously stated in *Cañiza v. Court of Appeals*, *"it is axiomatic that what determines the nature of an action as well as which court has jurisdiction over it, are the allegations of the complaint and the character of the relief sought."* What the petitioners actually filed was a fatally defective complaint for forcible entry, considering that there was no allegation therein regarding the petitioners' prior physical possession of the lot. In *Tirona v. Alejo*, we held that *"in actions for forcible entry, two allegations are* ***mandatory*** *for the municipal trial court to acquire jurisdiction: first, the plaintiff must allege his prior physical possession of the property; and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, namely, force, intimidation, threats, strategy, and stealth."* The petitioners' allegation that they are the registered owners of the lot miserably falls short of satisfying the required averment of prior physical possession. As we had clarified and stressed in *Tirona*, *"the word* ***possession*** *as used in forcible entry and unlawful detainer, means nothing more than* ***physical possession, not legal possession*** *in the sense contemplated in civil law."*

3. ID.; JURISDICTION; MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS. — It is well-settled that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. The rule remains that estoppel does not confer jurisdiction on a tribunal that has none over the cause of action or subject matter of the case. In any event, even if respondent did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. In this sense, dismissal for lack of jurisdiction may even be ordered by the court *motu proprio*.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Offices for petitioners.
Domingo Dizon & Leonardo for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] dated January 3, 2006 of the Court of Appeals in CA-G.R. SP No. 90381, which reversed the Decision[2] dated March 10, 2005 of the Regional Trial Court (RTC) of Manila, Branch 39, in Civil Case No. 04-111243.

The facts are as follows:

This case originated from the ejectment complaint filed by the petitioners against the respondent, his wife, and all persons claiming rights under them before Branch 28 of the Metropolitan Trial Court (MeTC) of Manila. In their complaint,[3] the petitioners alleged among others that (1) they are owners of the lot described and embraced in Transfer Certificate of Title (TCT) No. 262237[4] of the Registry of Deeds of the City of Manila; (2) the respondent constructed a shanty thereon without their consent; (3) the respondent and his co-defendants have not been paying any rent to the petitioners for their occupation thereof; (4) the respondent and his co-defendants refused the formal demand made by the petitioners for them to vacate the subject lot; and (5) the Office of the Barangay Captain of Barangay 464, Zone 46, 4th District, Manila issued the necessary Certification to File Action.[5]

In his answer, the respondent denied the allegations of the complaint, and essentially claimed that (1) his construction of the temporary makeshift house on the lot was tolerated by the

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[1] *Rollo,* pp. 25-38. Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo concurring.

[2] *Id.* at 61-68. Penned by Presiding Judge Noli C. Diaz.

[3] *Id.* at 47-51.

[4] Records, Vol. I, p. 38.

[5] *Id.* at 223.

petitioners, considering that he acted as the caretaker thereof; and (2) he does not remember receiving any demand letter and summons from the barangay and so he was surprised to know that an ejectment complaint was filed against him.[6]

In its Decision[7] dated September 27, 2004, the MeTC found in favor of the petitioners. It held that the respondent, his wife, and all persons claiming rights under them, being possessors by tolerance, can be validly ejected from the lot at any time and after due notice. It then directed them to vacate the lot, pay ₱5,000 a month from January 2004 up to such time that the lot is actually turned over to the petitioners, and pay ₱10,000 as attorney's fees.

The respondent appealed to the RTC which affirmed *in toto* the assailed MeTC decision.

Unfazed by the decision of the RTC, the respondent elevated the case to the Court of Appeals. After finding the complaint to be substantially lacking in the requisite allegations that would make out a case either for forcible entry or unlawful detainer,[8] the Court of Appeals reversed the RTC decision and accordingly dismissed the petitioners' complaint. The dispositive portion of the Court of Appeals decision reads:

> **WHEREFORE**, premises considered, we hereby **GRANT** the petition on the basis of the lower tribunals' lack of jurisdiction, and accordingly **DISMISS** respondents' ejectment complaint.
>
> **SO ORDERED**.[9]

The petitioners moved for reconsideration, but the Court of Appeals denied the motion. Hence, this petition on the following grounds:

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

[7] *Id.* at 43-46. Penned by Judge Ruben Reynaldo G. Roxas.

[8] *Rollo*, p. 34.

[9] *Id.* at 38.

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING PETITIONERS' EJECTMENT COMPLAINT ON THE ALLEGED GROUND THAT THE *COMPLAINT* FAILED TO STATE THE JURISDICTIONAL FACT OF PRIOR PHYSICAL POSSESSION.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT THE RESPONDENT WAS IN ESTOPPEL FROM QUESTIONING THE JURISDICTION OF THE METROPOLITAN TRIAL COURT ASSUMING, WITHOUT ADMITTING, THAT THE LOWER COURT HAD NO JURISDICTION OVER THE COMPLAINT.[10]

Simply put, we are asked to resolve: (1) whether the Court of Appeals correctly dismissed the complaint; and (2) whether the respondent was already estopped from questioning the jurisdiction of the MeTC.

Anent the first issue, the petitioners argue that the complaint was for unlawful detainer, and hence, there was no need for them to allege prior physical possession of the lot. They further contend that their position that the complaint was for unlawful detainer is supported by the claim of the respondent in his answer that "*he made a temporary makeshift structure on the lot to serve as his living place and that the same was tolerated by the petitioners considering that he acted as caretaker of the property*."[11] For his part, the respondent insists that the Court of Appeals was correct in dismissing the complaint.[12]

After carefully examining the averments of the petitioners' complaint and the character of the reliefs sought therein,[13] we

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

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

[12] *Id.* at 187-190.

[13] *Tirona v. Alejo*, G.R. No. 129313, October 10, 2001, 367 SCRA 17, 28; *Cañiza v. Court of Appeals*, G.R. No. 110427, February 24, 1997, 268 SCRA 640, 647-648.

hold that the Court of Appeals did not err in finding that the complaint was for forcible entry, and that the Court of Appeals correctly dismissed it.

There are two reasons why we could not subscribe to the petitioners' submission that their complaint was for unlawful detainer. *Firstly*, the petitioners' own averment in the complaint *"that the defendant constructed a shanty in the lot of the plaintiffs without their consent,"*[14] and the relief asked for by the petitioners that the respondent and his wife *"pay the amount of ₱10,000 a month beginning January 2004 as for reasonable rent of the subject premises,"*[15] clearly contradict their claim. It must be highlighted that as admitted by the petitioners in their motion for reconsideration[16] before the appellate court, and as evidenced by the TCT No. 262237 annexed to the complaint, the petitioners became owners of the property only on January 6, 2004. By averring that the respondent constructed his shanty on the lot *without their consent* and then praying that the MeTC direct the respondent to pay them rent from January 2004, or from the inception of the respondent's occupation of the lot, no other conclusion can be made except that the petitioners had always considered respondent's occupation of the same to be unlawful from the very beginning. Hence, the complaint can never support a case for unlawful detainer. *"It is a settled rule that in order to justify an action for unlawful detainer, the owner's permission or tolerance must be present at the beginning of the possession."*[17]

Secondly, the nature of the complaint is neither changed nor dependent upon the allegations and/or defenses made in the answer. As we had previously stated in *Cañiza v. Court of Appeals*,[18] *"it is axiomatic that what determines the nature of*

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[14] *Rollo*, p. 49.

[15] *Id.* at 50.

[16] *Id.* at 40-43.

[17] *Heirs of Demetrio Melchor v. Melchor*, G.R. No. 150633, November 12, 2003, 415 SCRA 726, 734.

[18] *Supra* note 13, at 647-648.

an action as well as which court has jurisdiction over it, are the allegations of the complaint and the character of the relief sought."

As correctly found by the Court of Appeals, what the petitioners actually filed was a fatally defective complaint for forcible entry, considering that there was no allegation therein regarding the petitioners' prior physical possession of the lot.[19] In *Tirona v. Alejo*, we held that *"in actions for forcible entry, two allegations are* ***mandatory*** *for the municipal trial court to acquire jurisdiction: first, the plaintiff must allege his prior physical possession of the property; and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1,*[20] *Rule 70 of the Rules of Court, namely, force, intimidation, threats, strategy, and stealth."*[21]

The petitioners' allegation that they are the registered owners of the lot miserably falls short of satisfying the required averment of prior physical possession. As we had clarified and stressed in *Tirona, "the word* ***possession*** *as used in forcible entry and unlawful detainer, means nothing more than* ***physical possession, not legal possession*** *in the sense contemplated in civil law."*[22]

Finally, was the respondent already estopped from questioning the jurisdiction of the MeTC to try the petitioners' complaint?

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[19] *Rollo*, p. 35.

[20] SECTION 1. *Who may institute proceedings, and when.*—Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person may at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[21] *Supra* note 13, at 30.

[22] *Id.* at 29.

The petitioners argue that the respondent is already estopped because the respondent failed to assail the jurisdiction of the MeTC at the earliest opportunity and actively participated in the proceedings before it.[23] The respondent counters that he could not be held guilty of estoppel because he questioned in his answer and pleadings petitioners' allegation that he was served a demand letter. By questioning the veracity of the allegation of the existence of a jurisdictional requirement, he, in effect, questioned the jurisdiction of the MeTC in trying the case.[24]

It is well-settled that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[25] The rule remains that estoppel does not confer jurisdiction on a tribunal that has none over the cause of action or subject matter of the case.[26] In any event, even if respondent did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. In this sense, dismissal for lack of jurisdiction may even be ordered by the court *motu proprio*.[27]

WHEREFORE, the instant petition is *DENIED* for lack of merit. Costs against the petitioners.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr. and *Azcuna,*[*] *JJ.,* concur.

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[23] *Rollo,* p. 10.

[24] *Id.* at 115-118.

[25] *Venancio Figueroa y Cervantes v. People*, G.R. No. 147406, July 14, 2008, pp. 1, 12.

[26] *Eustacio Atwel, et al. v. Concepcion Progressive Association, Inc.*, G.R. No. 169370, April 14, 2008, pp. 1, 12.

[27] *Andaya v. Abadia*, G.R. No. 104033, December 27, 1993, 228 SCRA 705, 717.

[*] Designated in lieu of Associate Justice Arturo D. Brion, the *ponente* in the Court of Appeals.

SECOND DIVISION

[G.R. No. 172848. December 10, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JOSE VICTORINO K. CASTRO (as attorney-in-fact of the heirs of Rogelio Castro) and VIOLETA KAMOSENG CASTRO (as attorney-in-fact of Nilda Castro-Stahl),** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; JUDICIAL RECONSTITUTION OF CERTIFICATE OF TITLE; REQUIREMENTS THEREOF ARE MANDATORY. — It is a settled rule that proceedings for judicial reconstitution of certificates of title are proceedings *in rem*, with the publication of the notice of hearing in the Official Gazette sufficient to clothe the court with jurisdiction. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. In *Tahanan Development Corp. v. Court of Appeals*, the Court had the opportunity to discuss the mandatory nature of the requirements of Republic Act No. 26, thus: Republic Act No. 26 entitled "An act providing a special procedure for the reconstitution of Torrens Certificates of Title lost or destroyed" approved on September 25, 1946 confers jurisdiction or authority to the Court of First Instance to hear and decide petition for judicial reconstitution. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. These requirements and procedure are mandatory. The Petition for Reconstitution must allege certain specific jurisdictional facts; the notice of hearing must be published in the Official Gazette and posted in particular places and the same sent or notified to specified persons. Section 12 and 13 of the Act provide specifically the mandatory requirements and procedure to be followed. In one case, the Court ruled that in a petition for reconstitution, all the data required by Republic Act No. 26 must be included in the petition. Indeed, the requirements in Section 12, on the

contents of a petition, and Section 13, on the publication of the notice of petition, are mandatory and jurisdictional in nature and the non-observance thereof fatally affects the whole proceedings in all its aspects.

2. ID.; ID.; ID.; ID.; PUBLICATION; IDENTIFICATION OF MISSING/LOST TITLE MERELY AS "TCT NO. (N.A.)," INSUFFICIENT. — Upon examination of the petition, the Court finds that the Amended Order, containing the notice of petition and hearing date of the trial court, was published in the Official Gazette. However, the amended order as issued and published does not align with the *in rem* character of the reconstitution proceedings and the mandatory nature of the requirements under Republic Act No. 26. There is a mortal insufficiency in the publication in that the heirs had identified the missing/lost title merely as "TCT No. (N.A.)." The failure to identify the exact title number defeats the purpose of the twin notice and publication requirements since persons who have interest in the property or who may otherwise be affected by the reconstitution of the supposed title thereto would not be able to readily identify the said property or could even be misled by the vague or uncertain title reference.

3. ID.; ID.; ID.; ID.; THAT ALL DOCUMENTS EVIDENCE FOR THE PETITION FOR RECONSTITUTION SHOULD BE ATTACHED THERETO AND FILED WITH THE SAME; NOT COMPLIED WITH IN CASE AT BAR. — Under Section 12 of Republic Act No. 26, all the documents, or authenticated copies to be introduced in evidence in support to the petition for reconstitution should be attached thereto and filed with the same. In this case, the heirs anchor their claim on the deed of sale between Roxas and Maria Carudan which allegedly established their full and lawful ownership of Lots 159, 167 and 172. However, the deed was not attached to their petition, but merely presented before the trial court for the first time as late as 25 August 2003, or two years after the petition was filed and a year after the Amended Order was published in the Official Gazette. The heirs should have amended their petition to include the deed of sale so that it could be properly introduced in evidence, and subsequently caused the publication of the Amended Order which served as the notice of petition conformably with Sec. 12 of Republic Act No. 26.

4. ID.; ID.; ID.; ID.; OMISSIONS IN THE REQUIREMENT DIVEST THE TRIAL COURT OF JURISDICTION. — As the heirs failed to indicate the number of the lost TCT and to attach the deed of sale to the petition, necessarily these data could not have appeared as in fact they did not so appear in the notice of hearing published in the Official Gazette. In view of these omissions, the Court rules that the trial court did not acquire jurisdiction to proceed with the case since the mandatory manner or mode of obtaining jurisdiction as prescribed by the statute had not been strictly followed, thereby rendering the proceedings utterly null and void.

5. ID.; ID.; RECONSTITUTION OF CERTIFICATE OF TITLE; ELUCIDATED. — Reconstitution of a certificate of title, in the context of Republic Act No. 26, denotes the restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title or any document is to have the same reproduced, after proper proceedings in the same form it was when the loss or destruction occurred. Thus, before any reconstitution may be made, there would be proof that the title sought to be reconstituted had actually existed.

6. ID.; ID.; ID.; FAILURE OF THE REPUBLIC TO INTERPOSE OPPOSITION TO THE EVIDENCE DOES NOT PREVENT THE REPUBLIC FROM ASSAILING THE DECISION GRANTING A PETITION FOR RECONSTITUTION WHICH HAS NO MERIT, BY LAW AND EVIDENCE. — The courts *a quo* make much of the fact that the Republic, through the OSG or the provincial prosecutor, failed to interpose any opposition/objection to the evidence presented by the heirs, and that it did not also present any evidence against the claims of the heirs. It has been held, however, that the Republic of the Philippines is not estopped from assailing the decision granting the petition for reconstitution if, on the basis of the law and the evidence on record, such petition has no merit.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; DOCUMENTS APPENDED TO THE APPELLEES' BRIEF, PRESENTED FOR THE FIRST TIME IN THE COURT OF APPEALS, SHOULD NOT HAVE BEEN CONSIDERED. — Anent the documents appended to the appellees' brief, we find that the same should not have been considered by the Court of

Appeals, having been presented therein for the first time. To rule otherwise would be to deny due process of law to the Republic because these were introduced by the heirs for the first time on appeal, and the OSG had no opportunity to examine the said documents. To allow a party to attach any document to his pleading and expect the court to consider it as evidence may draw unwarranted consequences. The opposing party would be deprived of a chance to examine the document and object to its admissibility. The appellate court would also have difficulty reviewing the documents not previously scrutinized by the court below. Indeed, the pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case. Piecemeal presentation of evidence is simply not in accord with orderly justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eudivigo G. Roxas for respondents.

D E C I S I O N

TINGA, *J.*:

Before us is a petition[1] seeking the review and reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. CV No. 81816 dated 22 July 2005 and 26 May 2006, respectively.

The antecedents follow.

On 8 February 2001, the heirs of Rogelio Castro and Nilda Castro-Stahl (heirs) filed a verified petition seeking the reconstitution of Transfer Certificate of Title (TCT) No. "(N.A.)"

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[1] *Rollo,* pp. 7-29.

[2] *Id.* at 31-37.

[3] *Id.* at 39-41; penned by Associate Justice Roberto A. Barrios, with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso concurring.

covering Lots 159, 167 and 172, block 8, Psu-25131, with areas of 6,470 sqm., 2,592 sqm. and 4,185 sqm., respectively, situated in Balayhangin, Calauan, Laguna.[4] Attached to the petition are: (i) a Tax Declaration over a property in Balayhangin, Calauan, Laguna identified only as Cadastral Lot No. 159,167,172 in the name of "Nilda V. Castro (S)-½ & Victorino K. Castro; Joel K. Castro, Jose Alexis K. Castro & Marivic K. Castro, all ½;"[5] (ii) a Resurvey Plan of Lots 159, 167, & 172, Blk. 8, Psu-25131;[6] (iii) Technical Descriptions of Lots 159, 167 and 172;[7] (iv) Certification from the Register of Deeds of Santa Cruz, Laguna that Lots 159, 167, & 172 of Block 8, Psu-25131 are not among the records on file;[8] and (v) a Geodetic Engineer's Certificate stating that he had surveyed Lot-159Rs-043406-00I892.[9]

Finding the petition sufficient in form and substance, the trial court issued an Amended Order: (i) directing interested parties to file their opposition to the petition or show cause why the same should not be granted; and (ii) ordering the heirs to cause the publication of the order.[10]

During the proceedings in the trial court,[11] the heirs averred that the lots were inherited by Rogelio Castro and Nilda Castro-Stahl from their grandparents Juan Castro and Maria Carudan who, in turn, purchased the lots from Doña Margarita Roxas de Ayala *vda*. de Soriano (Roxas). The lots were once part of Hacienda Calauan owned by Roxas. According to the heirs,

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[4] Records, pp. 1-3.

[5] *Id.* at 6.

[6] *Id.* at 7.

[7] *Id.* at 8-10.

[8] *Id.* at 11.

[9] *Id.* at 6-12.

[10] *Id.* at 21-23. An Order was initially issued on 30 March 2001. However, it mentioned only one of the parcels of land covered by the supposed lost title, thus the heirs sought its amendment.

[11] Regional Trial Court, Branch 92, Calamba, Laguna.

their copy of the TCT covering the properties was lost during World War II and could not be recovered despite diligent efforts. Moreover, the original copy of the TCT on file with the Register of Deeds of Santa Cruz, Laguna, as well as the pertinent documents, was lost and destroyed on account of the war. The heirs caused the survey of the lots and acquired a Resurvey Plan approved by the Department of Environment and Natural Resources.[12]

On 18 November 2003, the trial court granted the petition, thus:

> WHEREFORE, finding the petition to be supported by evidence on record, the Registry of Deeds of Santa Cruz, Laguna is hereby ordered to reconstitute Transfer Certificate of Title No. (N.A.) covering Lot 159, Lot 167, and Lot 172, Block 8, Psu-25131 all situated at Barangay Balayhangin, Calauan, Laguna in the name of the original owner Margarita Roxas y Ayala Vda. De Soriano, using as basis thereof the plan and technical descriptions of said lots, together with pertinent documents attached herewith, subject to the conditions that the said reconstituted title shall be subject to such encumbrances as maybe [*sic*] subsisting and provided further that no certificate of title covering the same parcel of land exist in his office.[13]

The Republic, through the Office of the Solicitor General (OSG), elevated the case to the Court of Appeals by way of an ordinary appeal.[14] The Court of Appeals, however, denied the appeal on 22 July 2005, after finding that the evidence presented by the heirs proved that the subject lots had belonged to Roxas and had been sold to Juan Castro and Maria Carudan, the predecessors-in-interest of the heirs. Moreover, the Court of Appeals held that the lots had been properly surveyed, with no discrepancies or inaccuracies, and that the technical description of the lots had been verified by the Land Registration Authority. The appellate court noted that the Republic had never interposed

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[12] Records, p. 7.

[13] *Rollo,* p. 46.

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

any opposition to the petition nor objection to the evidence presented by the heirs and neither had it presented evidence against the claims of the heirs.[15]

The OSG filed a motion for reconsideration[16] of the decision, alleging that: (i) the documents attached to the brief of the heirs as appellees may not be considered in evidence since the heirs had not filed a motion for new trial on the ground of newly-discovered evidence; and (ii) there was no sufficient evidence that a single TCT had been issued over the subject lots. The Court of Appeals denied the motion, stressing that it had not resolved the issues solely on the basis of the appended documents and that, even without the said documents, the evidence already presented in the court *a quo* had firmly established the heirs' entitlement to the reconstitution of their title to the subject lots.[17]

The documents appended to the appellees' brief were: (1) the General Subdivision Plan of Hacienda Calauan;[18] (2) the Log Book of Hacienda Calauan showing lot numbers and block numbers;[19] and (3) a copy of TCT No. 4246[20] with the name "Margarita Roxas *y* Ayala viuda de Soriano" inscribed therein as the registered owner.

Before us, the OSG reiterates that the documents attached to the appellees' brief filed in the Court of Appeals in support of their petition for reconstitution of title may not be considered in evidence because they did not file a motion for new trial based on newly-discovered evidence. Furthermore, even assuming that the documents which the heirs submitted for the first time on appeal may be considered in evidence, said documents as well as the other evidence presented in the proceedings *a quo*

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[15] *Supra* note 2.

[16] CA *rollo*, pp. 136-145.

[17] *Supra* note 3.

[18] CA *rollo*, p. 124.

[19] *Id.* at 59-123.

[20] *Id.* at 58.

do not suffice for the reconstitution of the TCTs covering the subject lots, the OSG claims.

According to the OSG, TCT No. 4246 shows that it covers a parcel of land located in Calauan described as Lot No. 384 of Block 9. However, it does not show that Lot No. 384 includes the subject lots owned by respondents. In any case, even if the subject lots form part of the parcel of land covered by TCT No. 4246, there is no evidence that TCT No. 4246 was cancelled and that a separate title covering the subject lots was issued. The Log Book, on the other hand, refers to a parcel of land described as Block 2, while the land covered by TCT No. 4246 was described as Block 9. Finally, the OSG avers that there is no showing that a certificate of title was ever issued covering the subject lots. In fact, Jose Victorino Castro, one of the heirs, testified that he was not aware if a certificate of title was issued in the name of Roxas covering the subject lots, which leads to the conclusion that the lots are unregistered and cannot be subject of a petition for reconstitution.

For their part, the heirs advert to a certified true copy of the Deed of Absolute Sale[21] between Roxas and Maria Carudan vda. de Castro over Lot Nos. 124, 159, 167 and 172 of Plan Psu-25131 of Hacienda Calauan. They aver that this document, the original of which is in the custody of the National Archives, confirms the judiciousness of the trial court's decision.[22]

In reply, the OSG claims that assuming *arguendo* that the subject lots were covered by the transfer certificates of title mentioned in the deed of sale, there is no proof that the certificates of title were cancelled and consolidated into a single transfer certificate of title by Roxas, which would justify the reconstitution of only one certificate of title.[23] It adds that the reconstitution of a certificate of title with an unknown number was viewed

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[21] *Rollo*, pp. 51-52. The Deed of Sale was also marked as Exhibit "N" in the trial court proceeding.

[22] *Id.* at 48-50.

[23] *Id.* at 68.

with disfavor by this Court in one case.[24] Moreover, it points out that if TCT No. 4246 is the certificate of title covering the subject lots, said TCT should have at least been mentioned in the deed of sale.[25]

The petition deserves favorable action.

First. It is a settled rule that proceedings for judicial reconstitution of certificates of title are proceedings *in rem*, with the publication of the notice of hearing in the Official Gazette sufficient to clothe the court with jurisdiction.[26] It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.[27]

In *Tahanan Development Corp. v. Court of Appeals*,28 the Court had the opportunity to discuss the mandatory nature of the requirements of Republic Act No. 26, thus:

Republic Act No. 26 entitled "An act providing a special procedure for the reconstitution of Torrens Certificates of Title lost or destroyed" approved on September 25, 1946 confers jurisdiction or authority to the Court of First Instance to hear and decide petitions for judicial reconstitution. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. These requirements and procedure are mandatory. The Petition for Reconstitution must allege certain specific jurisdictional facts; the notice of hearing must be published in the Official Gazette and posted in particular places and the same sent or notified to specified persons. Section

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[24] Citing *Tahanan Development Corp. v. Court of Appeals*, 118 SCRA 273, *id.*

[25] *Rollo*, p. 69.

[26] *Calalang v. Register of Deeds of Quezon City*, G.R. No. 76265, 11 March 1994, 231 SCRA 88, 102.

[27] *Republic v. Court of Appeals*, G.R. No. 103746, 9 February 1993, 218 SCRA 773, 780.

[28] No. L-55771, 15 November 1982, 118 SCRA 273.

12[29] and 13[30] of the Act provide specifically the mandatory requirements and procedure to be followed.[31]

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[29] SECTION 12. Petitions for reconstitution from sources enumerated in sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. **All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same**: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in section 2(f) of 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property. (Emphasis supplied)

[30] SECTION 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the *Official Gazette*, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

[31] *Tahanan Development Corp. v. Court of Appeals, supra* note 26 at 273.

In one case,[32] the Court ruled that in a petition for reconstitution, all the data required by Republic Act No. 26 must be included in the petition. Indeed, the requirements in Section 12, on the contents of a petition, and Section 13, on the publication of the notice of petition, are mandatory and jurisdictional in nature and the non-observance thereof fatally affects the whole proceedings in all its aspects.

Upon examination of the petition, the Court finds that the Amended Order, containing the notice of petition and hearing date of the trial court, was published in the Official Gazette. However, the amended order as issued and published does not align with the *in rem* character of the reconstitution proceedings and the mandatory nature of the requirements under Republic Act No. 26. There is a mortal insufficiency in the publication in that the heirs had identified the missing/lost title merely as "TCT No. (N.A.)."[33] The failure to identify the exact title number defeats the purpose of the twin notice and publication requirements since persons who have interest in the property or who may otherwise be affected by the reconstitution of the supposed title thereto would not be able to readily identify the said property or could even be misled by the vague or uncertain title reference.

Moreover, under Section 12 of Republic Act No. 26,[34] all the documents, or authenticated copies to be introduced in evidence in support to the petition for reconstitution should be attached thereto and filed with the same. In this case, the heirs anchor their claim on the deed of sale between Roxas and Maria Carudan which allegedly established their full and lawful ownership of Lots 159, 167 and 172. However, the deed was not attached to their petition, but merely presented before the

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[32] *Alabang Development Corporation, et al. v. Hon. Valenzuela, etc., et al.*, 201 Phil. 727 (1982).

[33] Records, p. 1.

[34] AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED, approved on 25 September 1946.

trial court for the first time as late as 25 August 2003,[35] or two years after the petition was filed and a year after the Amended Order was published in the Official Gazette. The heirs should have amended their petition to include the deed of sale so that it could be properly introduced in evidence, and subsequently caused the publication of the Amended Order which served as the notice of petition conformably with Sec. 12 of Republic Act No. 26.

As the heirs failed to indicate the number of the lost TCT and to attach the deed of sale to the petition, necessarily these data could not have appeared as in fact they did not so appear in the notice of hearing published in the Official Gazette. In view of these omissions, the Court rules that the trial court did not acquire jurisdiction to proceed with the case since the mandatory manner or mode of obtaining jurisdiction as prescribed by the statute had not been strictly followed, thereby rendering the proceedings utterly null and void.[36]

Second. The heirs sought the reconstitution of one title-TCT No. (N.A.), supposedly covering Lots 159, 167, and 172 of Block 8, Psu-25131. Per the deed of sale, these lots were, at the time of the sale, individually covered by TCT Nos. 4710, 4718 and 4723, respectively.[37] If there were indeed three (3)

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[35] Per the certification of the Records Management and Archives Office, National Archives, the copy presented by the heirs was issued only on 26 June 2003.

[36] *Alabang Development Corporation, et al. v. Hon. Valenzuela, etc., et al.*, 201 Phil. 727, 744 (1982).

[37] The pertinent portions of the deed read:

> x x x *Doña Margarita Roxas, Vda. de Soriano, prometio vener a Doña Maria Carudan Vda. de Castro, cuatro (4) parcelas de terreno secano, con todas las mejoreas en ellas existente, conocidas* ***como Lotes Nos. 124, 159, 167 y 172, del Plano Psu-25131, del plano parcelario de la Hacienda de Calauan*** *de la propriedad de dicha señora, bajo los terminos y condiciones estipulados en las referidas escrituras*;
>
> x x x x x x x x x

separate titles for each of the lots, it is perplexing why the heirs would seek the reconstitution of just one TCT—that allegedly covering all the three (3) lots. Moreover, a careful scrutiny of the records shows that there is no evidence showing that these lots were consolidated under one title only. Even the deed of sale, which facially proves their interest over the properties, does not establish the existence of a single title over the three (3) lots.

Reconstitution of a certificate of title, in the context of Republic Act No. 26, denotes the restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land.[38] The purpose of the reconstitution of title or any document is to have the same reproduced, after proper proceedings in the same form it was when the loss or destruction occurred.[39] Thus, before any reconstitution may be made, there should be proof that the title sought to be reconstituted had actually existed. In the present case, while there appears to be separate titles to the three (3) lots, there is no indication that a single title (TCT) covering all the lots exists, save for the heirs' assertion. This being the case, it was error for both the trial court and the Court of Appeals to grant the petition for reconstitution.

Third. The courts *a quo* make much of the fact that the Republic, through the OSG or the provincial prosecutor, failed

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x x x *POR TANTO, Doña Margarita Roxas, Vda. de Soriano, en consideracion a la cantidad de NUEVECIENTOS CINCUENTA Y CINCO PESOS CON 20/100 (₱955.20), moneda Filipina x x x ha recibido a su entera y cabal satisfaccion de la Sra. Maria Carudan Vda. de Castro x x x vende, cede, traspasa y entrega, para siempre, en absolute y a perpetuidad, a dicha Doña Maria Carudan Vda. de Castro … las parcelas terreno arriba referidas, con todas las mejoras en ellas existente, cuyas parcelas* ***tienen ahora Certificados de Transferencia de Titulos Nos. 4675, 4710,4718, y 4723 de la Oficina de Registrador de Titulos de la Provincia de Laguna*** x x x (Emphasis supplied)

[38] *Republic of the Phils. v. Court of Appeal*s, 368 Phil. 412, 420 (1999).

[39] *Alipoon v. Court of Appeals*, 364 Phil. 591, 598 (1999).

to interpose any opposition/objection to the evidence presented by the heirs, and that it did not also present any evidence against the claims of the heirs. It has been held, however, that the Republic of the Philippines is not estopped from assailing the decision granting the petition for reconstitution if, on the basis of the law and the evidence on record, such petition has no merit.[40]

Fourth. Anent the documents appended to the appellees' brief, we find that the same should not have been considered by the Court of Appeals, having been presented therein for the first time. To rule otherwise would be to deny due process of law to the Republic because these were introduced by the heirs for the first time on appeal, and the OSG had no opportunity to examine the said documents. To allow a party to attach any document to his pleading and expect the court to consider it as evidence may draw unwarranted consequences. The opposing party would be deprived of a chance to examine the document and object to its admissibility. The appellate court would also have difficulty reviewing the documents not previously scrutinized by the court below. Indeed, the pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.[41] Piecemeal presentation of evidence is simply not in accord with orderly justice.[42]

WHEREFORE, the instant petition is hereby GRANTED. The Court of Appeals' Decision and Resolution dated 22 July 2005 and 26 May 2006, respectively, in CA-G.R. CV No. 81816, and the 27 February 2002 Decision of the Regional

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[40] *Republic v. Holazo,* G.R. No. 146846, 31 August 2004, 437 SCRA 345, 352.

[41] *Villaluz v. Ligon,* G.R. No. 143721, 31 August 2005, 468 SCRA 486 (502, citing *Candido v. Court of Appeals,* G.R. No. 107493, 1 February 1996, 253 SCRA 78, 82

[42] *Cansino v. Court of Appeals,* 456 Phil. 686, 693 (2003).

Trial Court, Branch 92 of Calamba, Laguna ordering the reconstitution of TCT No. (N.A.) are REVERSED and SET *ASIDE*. The petition for reconstitution is DENIED.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172849. December 10, 2008]

MR. TERESO TAN, ANDRE T. ALMOCERA, for themselves and in behalf of the First Builders Multi-Purpose Cooperative (FBMPC), *petitioners, vs.* **MANUEL "GUY" LINK, ATTY. ARNOLD ARRIETA, ROSALIO T. KINTANAR, VIVIAN MAQUILING, LAND BANK OF THE PHILIPPINES (LBP), CIRILO YURO AND REINERIO CABANGBANG, MANUEL BARTOLABA and the PROVINCIAL REGISTER OF DEEDS of the PROVINCE OF CEBU,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; REQUIREMENT; TIMELY PAYMENT OF DOCKET FEE, MANDATORY; NON-PAYMENT THEREOF WARRANTS DISMISSAL OF APPEAL. — The dismissal of an appeal as the inevitable aftermath of the late payment of the appellate docket fee has been mandated since the effectivity of the 1997 Rules of Civil Procedure under Section 4 of Rule 41. The payment of docket fees is a requirement in filing an ordinary appeal from the decision or final order of the RTC, as provided in Rule 41, Section 4 of the 1997 Rules of Civil Procedure,

which reads: Sec. 4. *Appellate court docket and other lawful fees.* – Within the period for taking an appeal, the appellant shall pay to the clerk of the 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. The 1997 Rules of Civil Procedure, as amended, which took effect on 1 July 1997, now require that appellate docket and other lawful fees must be paid within the same period for taking an appeal. This is clear from the opening sentence of Section 4, Rule 41 of the same Rules that, "[w]ithin the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or fifnal order appealed from, the full amount of the appellate court docket and other lawful fees." The use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, one which has always been or which must be given a compulsory meaning, and it is generally imperative or mandatory. The right to appeal is purely a statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor. For this reason, payment of the full amount of the appellate court docket and other lawful fees within the reglementary period is mandatory and jurisdictional. This Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. The payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.

2. ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE REQUIRES EXCEPTIONALLY MERITORIOUS REASON; NOT PRESENT IN CASE AT BAR. — There are, admittedly, exceptions to the general rule on the timely payment of appellate docket fees which are also embodied in jurisprudence. Yet a common thread in all of said cases is an exceptionally meritorious reason why the appellate docket fees in the cases were not timely paid. Thus, our only point of focus in determining whether there stands an exceptionally meritorious

reason why petitioners' appeal should be given due course is the justification that petitioner Tan travelled all the way to Cebu but the traffic stalled him. That is all. Yet if we were to grant the petition, it would set an ignoble precedent wherein mere allegation of traffic is sufficient to relax the jurisdictional requirements for the perfection of an appeal. Petitioners' excuse is not satisfactory. Petitioner Tan's late arrival at Bogo, Cebu was not unpreventable for he could have left much, much earlier for his destination, considering that the traffic congestion is almost infamous in Cebu, a fact certainly known to Tan. Their failure to pay the docket fees on time manifested their lack of foresight and planning. Petitioner Tan having arrived after office hours, he cannot expect any RTC employee to have stayed behind.

3. ID.; ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE; WHEN PROPER. — We further explained the rule on payment of dockets when we held that: In all, what emerges from all of the above is that the rules of procedure in the matter of paying the docket fees must be followed. However, there are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.

4. ID.; JURISDICTION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); ALL AGRARIAN DISPUTES INVOLVING THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP). – Basic is the rule that jurisdiction is determined by the allegations in the Complaint. In this case, we find that jurisdiction over the complaint of the petitioners fell on the DARAB. Section 1, Rule II, 2002 DARAB Rules of Procedure pointedly covers this particular issue before us. It provides: Section 1. Primary And Exclusive Original and Appellate Jurisdiction. — The board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. x x x. *Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Development Corporation* clearly instructs that: All controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR), *even though they raise questions that are also legal or constitutional in nature. All doubts should be resolved in favor of the DAR, since the law has granted it special and original authority to hear and adjudicate agrarian matters.* In *Centeno v. Centeno* we stated that: [U]nder Section 50 of R.A. 6657 (the Comprehensive Agrarian Reform Law of 1988), the DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The rule is that the DARAB has jurisdiction to try and decide any agrarian dispute or any incident involving the implementation of the Comprehensive Agrarian Reform Program.

5. ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; PROPER REMEDY TO QUESTION DARAB'S ORDER. — Since the DARAB's jurisdiction over the Complaint of the petitioners had been settled, and since the DARAB had already ruled on

> the petitioners' objection to the payment of just compensation in favor of Link, the proper remedy for the petitioners was to question at the Court of Appeals the DARAB's Orders through a Petition for *Certiorari* under Rule 65 of the Rules of Court as embodied under the DARAB Rules of Procedure, Rule XIV, Section 1, *viz:* Section 1. *Certiorari to the Court of Appeals.* — Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*. x x x.

APPEARANCES OF COUNSEL

Climacs Consulting & Litigation Offices for petitioners.
Perez & Tayurang Law Offices for M. Link.
Louella L. Albina and Alvin L. Arante for DAR-Paro & M. Bartolaba.

D E C I S I O N

CHICO-NAZARIO, J.:

This is an appeal by *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking the reversal and setting aside of (1) the Decision[1] dated 21 February 2006 of the Court of Appeals in CA-G.R. SP No. 82957 dismissing the Petition for *Certiorari* under Rule 65 of herein petitioners for their failure to pay docket fees on time, and affirming the Orders dated 26 September 2003 and 23 December 2003 of the Regional Trial Court (RTC) of Bogo, Cebu, Branch 61, in Civil Case No. Bogo-00994; and (2) the Resolution[2] dated 12 May 2006 of the appellate court in the same case denying petitioners' Motion for Reconsideration.

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[1] Penned by Associate Justice Arsenio J. Magpale with Associate Justices Vicente L. Yap and Apolonio D. Bruselas, Jr. concurring; *rollo*, pp. 31-38

[2] *Rollo*, p. 40.

The instant Petition arose from a complaint[3] for "Action Reindivicatoria *(sic)*, Damages, *Certiorari*, Prohibition and *Mandamus* with Prayer for Writ of Preliminary Prohibitory Injunction and Restraining Order" filed on 19 November 2002 by petitioners First Builders Multi-Purpose Cooperative (FBMPC), Andre T. Almocera (Almocera), and Tereso C. Tan (Tan) against respondents Manuel "Guy" Link (Link), Arnold Arrieta (Arrieta),[4] Rosalio T. Kintanar (Kintanar), Vivian Maquiling (Maquiling),[5] Land Bank of the Philippines (LBP), Cirilo Yuro, Jr. (Yuro), Reinerio Cabangbang (Cabangbang),[6] Manuel Bartolaba (Bartolaba),[7] and the Register of Deeds of the Province of Cebu. Their complaint was docketed before the RTC as Civil Case No. Bogo-00994.

Petitioners made the following allegations in their complaint:

Respondent Link sold his eight parcels of land situated in *Barangays* Anonang and Binanag, Bogo, Cebu (subject properties), to petitioners FBMPC and Almocera, evidenced by a Deed of Absolute Sale dated 2 April 2002.[8] The certificates of title to the subject properties remained in the name of respondent Link.

Unknown to petitioners, respondent Link had voluntarily offered the subject properties for sale under the coverage of the Comprehensive Agrarian Reform Program (CARP) of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL). In accordance with the provisions of the CARL, the

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[3] *Id.* at 42.

[4] Formerly the Regional Adjudicator of DAR Region VII.

[5] Kintanar and Maquiling work at the DAR Adjudication Board (DARAB).

[6] Cabangbang and Yuro are Officers of the LBP Valuation Office.

[7] Impleaded in his official capacity as Officer of the DAR in Cebu; *rollo*, pp. 43-44.

[8] Date of Deed of Sale as appearing in the Petition filed by the petitioner to this Court (*Rollo*, p. 21) and the decision of the Court of Appeals (*Rollo*, p. 32) although petitioner claim that as early as 1995, they already acquired the parcels of land. (*Rollo*, p. 22.)

subject properties were valued by the Valuation Office of respondent Land Bank of the Philippines (LBP) in order to determine the just compensation for the same. The Notice of Valuation, stating the amounts at which the subject properties were valued and giving notice that such amounts had already been deposited with the LBP Branch in P. del Rostio St., Cebu City, was sent to respondent Link.

The subject properties were initially valued at around ₱2,000,000.00. Respondent Link, purportedly in connivance with officers of the Cebu Provincial Office of the Department of Agrarian Reform (DAR), who included respondent Bartolaba, filed with the Department of Agrarian Reform Adjudication Board (DARAB) an application for valuation of the subject properties. The petitions of respondent Link were docketed as DARAB Cases No. V11-1225-C-1997 and No. V11-1220-C-96 and assigned to respondent Kintanar, a Provincial Agrarian Reform Adjudicator.

Upon their discovery of the transgressions committed by Link, petitioners, through counsel, wrote a letter dated 12 August 2001 addressed to respondent Kintanar of the DARAB; with copy furnished respondent Yuro, an LBP officer. Petitioners claimed in their letter that the subject properties had already been sold to them by respondent Link. They further requested that any claim, request, or undertaking involving the subject properties by other individuals or entities be set aside.

Acting on petitioners' letter dated 12 August 2001, which he treated as a motion for the payment of just compensation, respondent Kintanar required the parties to file their respective position papers. Based on the submitted position papers, respondent Kintanar subsequently issued an Order dated 10 December 2001 denying for want of merit petitioners' letter/motion for payment of just compensation for the subject properties, based on the following reasoning:

> A careful calibration of the evidence adduced herein, the claim of FBMPC as the lawful and absolute owner of the subject lots on the basis of an unregistered Deed of Sale dated April 2, 1995 is diametrically baseless, farfetched and preposterous for utter failure to register the said sale and secure the necessary Certificate of Title

in its name as prescribed by law. No amount of rhetorical force could smokescreen the fatal flaw emanating from the defective sale as provided for by laws heretofore indicated.

Besides, it is significant to note that the subject properties are within the pale of CARP Coverage as enshrined under Republic Act 6657. CARP Law and these lots are purposely acquired by the government and intended solely and exclusively for distribution to farmer-beneficiaries, not to any private persons and/or associations like the FBMPC. x x x.[9]

Respondent Kintanar thus ordered:

WHEREFORE, premises considered, the Letter-Motion for Payment of Just Compensation over the subject properties by FBMPC is hereby DENIED DUE COURSE for want of merit. Accordingly, directing Land Bank Office, Cebu City to pay the just compensation to Mr. Manuel Link as warranted by law and evidence adduced hereof. Further still, ordering the DAR Provincial Office of Cebu through PARO Ma. Lourdes B. Mariano and CARPO Operations to properly note the instant directive heretofore indicated.[10]

Petitioners filed a Motion for Reconsideration of respondent Kintanar's Order dated 10 December 2001. It was already respondent Arrieta, a Regional Agrarian Reform Adjudicator, who acted on petitioners' Motion for Reconsideration and denied the same in an Order dated 21 March 2002.[11]

Respondent Kintanar issued an Order dated 20 August 2002 inhibiting himself from resolving any further incident or motion in DARAB Cases No. V11-1225-C-1997 and No. V11-1220-C-96 and directing the DARAB Clerk of Court to immediately forward the records of the cases to respondent Maquiling, another Provincial Agrarian Reform Adjudicator.

Despite the foregoing attempts of petitioners to preclude any other action on the pending DARAB cases, petitioner Tan was informed by LBP officials that the release of funds to pay

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[9] *Id.* at 177.

[10] *Id.* at 178.

[11] *Id.* at 90.

respondent Link just compensation for the subject properties was already imminent unless a restraining order or injunction would be issued by the regular courts.

Hence, petitioners instituted Civil Case No. Bogo-00994 before the RTC of Bogo, Cebu, Branch 61.

Respondent Link filed a Motion to Dismiss Civil Case No. Bogo-00994 on the following grounds:

A) The Honorable Court has no jurisdiction over the person of [respondent Link];

B) The Complaint states no cause of action;

C) The Honorable Court has no appellate jurisdiction over DARAB cases; and

D) This is patent case of forum shopping.[12]

The RTC granted respondent Link's motion in an Order dated 8 April 2003. After recounting the proceedings before the DARAB, the RTC ruled that:

In view of this environmental milieu and the antecedent proceedings of this case which originated from the aforesaid DARAB Cases, this Court is constrained to respect the said DARAB proceedings and the Orders they had issued, for after all, this Court is not the appellate court of the DARAB.

Rule XIV (Judicial Review, Section 1, of the DARAB New Rules of Procedure provides that:

> "SECTION 11.. *Certiorari* to the Court of Appeals. Any decision, order, award or ruling by the Board or on any matter pertaining to the applicamtion, implementation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*. x x x.

If [herein petitioners] want to set aside the DARAB Orders dated December 10, 2001, March 21, 2002 and August 20, 2002 which they are now asking from this Court, they should have directed their

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[12] *Id.* at 63.

case to the Court of Appeals and not to this Court, pursuant to the aforementioned provision of the DARAB Rules of Procedure.

Certainly, this Court cannot be blinded by the instant Complaint which was filed under the guise of adding party plaintiffs and defendants, and adding a cause of action which is the reinvidicatory action with damages, in order not to be detected and charged with violation of forum shopping. These additions cannot hide the fact that the main purpose of the [petitioner] FBMPC in the instant complaint is to delay, if not to block, the payment of the just compensation in favor of [herein respondent] Manuel Link, which the DARAB, in its Order dated December 10, 2001, had already awarded in favor of the said [respondent]. This Court does not want to be party to this act of the [petitioners].[13]

And consequently decreed, thus:

WHEREFORE, premises considered, the instant MOTION TO DISMISS dated January 4, 2003 filed by [respondent] Manuel Link is hereby GRANTED.

Accordingly, the instant Complaint dated November 12, 2002, is hereby ordered DISMISSED.[14]

Petitioners filed a Motion for Reconsideration of the foregoing RTC Order but the same was denied by the same court in an Order dated 28 July 2003.[15] Petitioners received a copy of the 28 July 2003 Order of the RTC on 15 August 2003.

On 29 August 2003, petitioners filed their Notice of Appeal *via* registered mail, accordingly furnishing the respondents a copy of the same.[16]

On 1 September 2003, petitioner Tan had to travel from Cebu City to Bogo, Cebu. He arrived at Bogo already late in the afternoon, and unable to find an employee of the RTC, he left the amount for the payment of the docket fees for their

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[13] *Id.* at 91-93.

[14] *Id.* at 93.

[15] *Id.* at 98.

[16] *Id.* at 185.

appeal to Mrs. Estrella Nini, an employee of the Municipal Trial Court.

On 26 September 2003, the RTC issued an Order dismissing petitioners' Notice of Appeal. According to the RTC:

> Considering that Tereso C. Tan is not a real party-in-interest in this case, neither was he specifically authorized by [herein petitioners] First Multi-Purpose Cooperative and Andre T. Almocera to institute an appeal from the Orders of this Court dated April 8, 2003 and July 8, 2003 and considering further that the corresponding appeal fee was paid by him only on September 2, 2003,[17] which is beyond the last day of the reglementary period of filing the appeal on August 30, 2003, the opposition of [herein respondent] Manuel Link to the said appeal is hereby GRANTED.
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> WHEREFORE, premises considered, the NOTICE OF APPEAL dated August 29, 2003 filed by Tereso Tan is hereby ordered DISMISSED and NOT GIVEN DUE COURSE, for lack of merit.[18]

Petitioners' Motion for Reconsideration[19] of the afore-quoted Order was denied by the RTC in another Order dated 23 December 2003.[20]

Petitioners sought recourse from the Court of Appeals by filing a Petition for *Certiorari*, under Rule 65, docketed as CA-G.R. SP No. 82957.

The Court of Appeals, however, in a Decision dated 21 February 2006, affirmed the RTC Orders dated 26 September 2003 and 23 December 2003.

In its Decision, the appellate court found that contrary to the ruling of the RTC, petitioner Tan had authority to file the Notice of Appeal on behalf of petitioners FBMPC and Almocera:

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[17] Official receipt issued to petitioners show that docket fees was paid 3 September 2003. (*Rollo*, p. 236.)

[18] *Id.* at 101.

[19] *Id.* at 102.

[20] *Id.* at 110-111.

The notarized Secretary'[s] Certificate signed by Jovita A. Padilla dated May 22, 2002 of FBMPC further shows that a resolution was passed by the cooperative on March 15, 2002 authorizing Tereso Tan to be their lawful attorney in fact; to act for their name, place and stead the filing of the necessary criminal, civil and administrative action against Manuel "Guy" Link and others; to prosecute, by himself and through authorized agents the said cases including the filing of whatever pleadings, motions, briefs, memoranda, including the pursuit of any appeal to any appellate body, including administrative agencies; and to do what is absolutely necessary and proper as required of in said cases. Clothed with the authority to act for and in behalf of the petitioners, Tereso Tan therefore had the right to file the notice of appeal.[21]

However, the Court Appeals agreed with the RTC on the issue of late payment of docket fees, to wit:

As to the issue on the late payment of docket fees, petitioner Tereso Tan contend that the notice of appeal was made on August 29, 2003 and the payment of docket fee was made on September 1, 2003, which is the last day for filing the notice of appeal because the 15th day of the period to file appeal fell on August 30, 2003, a Saturday.

Thus, on September 1, 2003, Tereso Tan traveled from Cebu City to Bogo, Cebu in order to pay the filing fee. "Due to traffic due to vehicular defect," Tereso Tan was not able to find any employee of the RTC when he arrived at the Palace of Justice of Bogo. With no RTC employee to entertain him, he asked Mrs. Estrella Nini, an employee of MTCC of Bogo, Medellin whose office is just at the ground floor of the same building of the RTC, to receive the payment of the docket fee for practical purposes. However, the appeal fee was paid only on September 3, 2003. x x x.

In the case of Lazaro, et al. v. Court of Appeals, et al., the Supreme Court time and again ruled that failure to pay docket and other lawful fees within the prescribed period is a ground for the dismissal of an appeal.[22]

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[21] *Id.* at 35-36.

[22] *Id.* at 36.

The dispositive portion of the Decision of the Court of Appeals reads:

> Wherefore, in the light of the foregoing, the assailed Orders dated September 26, 2003 and December 23, 2003 of the RTC of Bogo, Cebu are AFFIRMED.[23]

The appellate court denied petitioners' Motion for Reconsideration in a Resolution dated 12 May 2006.[24]

Petitioners are presently before this Court arguing that:

> THE COURT OF APPEALS VIOLATED THE RIGHT OF PETITIONER TO DUE PROCESS WHEN IT DID NOT CONSIDER THE REMITTANCE OF THE AMOUNT OF P500.00 BY PETITIONER TO MS. ESTRELLA NINI, AN MTC COURT EMPLOYEE, ON 1 SEPTEMBER 2003 AS CONSTRUCTIVE PAYMENT OF SAID DOCKET FEE;
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> THE COURT OF APPEALS VIOLATED THE RIGHT OF PETITIONER TO DUE PROCESS WHEN IT DISREGARDED SUBSTANTIAL JUSTICE AND EQUITY CONSIDERING THE PETITIONER FILED HIS NOTICE OF APPEAL AS EARLY AS 29 AUGUST 2003 AND HAD TRAVELLED ALL THE WAY FROM CEBU CITY ON 1 SEPTEMBER 2003 FOR THE PURPOSE OF PAYING THE DOCKET FEE;
>
> ASSUMING FOR THE SAKE OF DISCUSSION THAT THE DOCKET FEE WAS FILED ONLY ON 2 SEPTEMBER 2003 OR ACTUALLY ONE (1) DAY LATE, THE CIRCUMSTANCES OF PETITIONER CLEARLY JUSTIFY ITS ADMISSION.[25]

Clearly, the fundamental issue in this case is whether the RTC was correct in denying petitioners' appeal on the ground of late payment of docket fees.

This issue is not new and has been the subject of jurisprudence in numerous cases.

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[23] *Id.* at 37.

[24] *Id.* at 40.

[25] *Id.* at 273-274.

The dismissal of an appeal as the inevitable aftermath of the late payment of the appellate docket fee has been mandated since the effectivity of the 1997 Rules of Civil Procedure under Section 4 of Rule 41.

The payment of docket fees is a requirement in filing an ordinary appeal from the decision or final order of the RTC, as provided in Rule 41, Section 4 of the 1997 Rules of Civil Procedure, which reads:

> Sec. 4. *Appellate court docket and other lawful fees*. — Within the period for taking an appeal, the appellant shall pay to the clerk of the 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.

The 1997 Rules of Civil Procedure, as amended, which took effect on 1 July 1997, now require that appellate docket and other lawful fees must be paid within the same period for taking an appeal. This is clear from the opening sentence of Section 4, Rule 41 of the same Rules that, "[w]ithin the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees."

The use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, one which has always been or which must be given a compulsory meaning, and it is generally imperative or mandatory.

The right to appeal is purely a statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor. For this reason, payment of the full amount of the appellate court docket and other lawful fees within the reglementary period is mandatory and jurisdictional.[26]

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[26] *Jose v. Court of Appeals*, 447 Phil. 159, 165 (2003).

This Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. The payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[27]

We have upheld the dismissal of deficient appeals in such cases as *Lazaro v. Court of Appeals*,[28] *Chan v. Court of Appeals*,[29] *Oriental Assurance Corp. v. Solidbank Corp.*,[30] *Manalili v. De Leon*,[31] *La Salette College v. Pilotin*,[32] *Navarro v. Metropolitan Bank & Trust Company*,[33] *Saint Louis University v. Cordero*,[34] *M.A. Santander Construction, Inc. v. Villanueva*,[35] and *Tamayo v. Tamayo, Jr.*[36]

Notwithstanding the catena of cases we have earlier cited, there are, admittedly, exceptions to the general rule on the timely payment of appellate docket fees which are also embodied in jurisprudence.[37] Yet a common thread in all of said cases is an

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[27] See *Manalili v. De Leon*, 422 Phil. 214, 220 (2001); *St. Louis University v. Cordero,* G.R. No. 144118, 21 July 2004, 434 SCRA 575, 583.

[28] 386 Phil. 412, 417 (2000).

[29] 390 Phil. 615, 620 (2000).

[30] 392 Phil. 847, 854-855 (2000).

[31] *Supra* note 27.

[32] 463 Phil. 785, 854-855 (2003).

[33] G.R. No. 138031, 27 May 2004, 429 SCRA 439, 446-447.

[34] *Supra* note 27.

[35] G.R. No. 136477, 10 November 2004, 441 SCRA 525, 529-530.

[36] G.R. No. 148482, 12 August 2005, 466 SCRA 618, 622-623.

[37] *Mactan Cebu International Airport Authority v. Mangubat*, 371 Phil. 393, 398 (1999); *Ayala Land, Inc. v. Carpo*, 399 Phil. 327, 333-334 (2000); *Yambao v. Court of Appeals*, 399 Phil. 712, 717-718 (2000); *Buenaflor v. Court of Appeals*, 400 Phil. 395, 401 (2000); *Alfonso v. Andres*, 439 Phil. 298, 305-306 (2002); *Villamor v. Court of Appeals*, G.R. No. 136858, 21 July 2004, 434 SCRA 565, 573-574.

exceptionally meritorious reason why the appellate docket fees in the cases were not timely paid.

Thus, our only point of focus in determining whether there stands an exceptionally meritorious reason why petitioners' appeal should be given due course is the justification that petitioner Tan traveled all the way to Cebu but the traffic stalled him. That is all. Yet if we were to grant the petition, it would set an ignoble precedent wherein mere allegation of traffic is sufficient to relax the jurisdictional requirements for the perfection of an appeal.

In this case, petitioners received a copy of the RTC Order dated 28 July 2003 denying their motion for reconsideration on **15 August 2003**. They had 15 days therefrom, or until **30 August 2003**, to perfect their appeal. However, 30 August 2003 was a Saturday. Hence, they had until **1 September 2003**, Monday, the immediately succeeding working day, within which to file their notice of appeal. Although petitioners claim that petitioner Tan left the amount for payment of the docket fees with an MTC employee on 1 September 2003, said payment was actually made and recorded on **3 September 2003** as shown by the official receipt issued to the petitioners.[38] Undeniably, the docket fees were paid late, and without payment of the docket fees, petitioners' appeal was not perfected within the reglementary period.

Petitioners' excuse is not satisfactory. Petitioner Tan's late arrival at Bogo, Cebu was not unpreventable for he could have left much, much earlier for his destination, considering that the traffic congestion is almost infamous in Cebu, a fact certainly known to Tan. Their failure to pay the docket fees on time manifested their lack of foresight and planning. Petitioner Tan having arrived after office hours, he cannot expect any RTC employee to have stayed behind.

In cases where the Court upheld the liberal application of the rules, the appellants therein hinged their arguments on exceptionally meritorious circumstances peculiar to their particular

[38] *Rollo*, p. 236.

situations that would convince the Court that they were entitled to a lax application of the Rules. Petitioners herein did not show such meritorious circumstance.

We further explained the rule on payment of dockets when we held that:

> In all, what emerges from all of the above is that the rules of procedure in the matter of paying the docket fees must be followed. However, there are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.[39]

Moreover, the Court finds no reversible error in the assailed Decision of the Court of Appeals affirming the dismissal of Civil Case No. Bogo-00994 by the RTC.

Basic is the rule that jurisdiction is determined by the allegations in the Complaint.[40] In this case, we find that jurisdiction over

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[39] *KLT Fruits, Inc. v. WSR Fruits, Inc.*, G.R. No. 174219, 23 November 2007, 538 SCRA 713, 728.

[40] *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, 26 January 2005, 449 SCRA 319, 326.

the complaint of the petitioners fell on the DARAB. Mainly, petitioners do not agree in the Orders of the DARAB officials which were prejudicial to them. Petitioners allege that the orders were issued by the DARAB with grave abuse of discretion or with lack or excess of jurisdiction. Perusal of petitioners' complaint would reveal that petitioners themselves invoked and accepted the jurisdiction of the DARAB over their dispute with respondent Link. Petitioners' prayer[41] is even more obvious: they request

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[41] WHEREFORE, it is most respectfully prayed that:

1. Writs of *certiorari*, prohibition and *mandamus* with preliminary prohibitory injunction issue against defendant officials as follows:

A. A writ of *certiorari* issue setting aside the orders dated December 10, 2001 (Annex "L"), May 13, 2002 (Annex "P") and August 20, 2002 (Annex "V") and any subsequent orders of the DARAB Provincial/Regional Adjudicator of Cebu Province/Region VII that may have been issued without the intervention of herein plaintiffs, for being issued in grave abuse of discretion amounting to lack of jurisdiction; that with regards to the register of deeds of the province of Cebu, to set aside the registration of any transaction with respect to the said lands in derogation of the rights of ownership and possession of the herein plaintiffs;

B. A writ of prohibition and writ of mandamus issue against the said officers prohibiting them from taking further cognizance of the land valuation cases over the subject properties and from further issuing any order that will affect the payment of compensation on the said properties, as well as prohibiting the defendant Land Bank Officers from releasing any amount of the moneys now deposited with the Land Bank Depositary in its Cebu City Branch in P. del Rosario Street, Cebu City or any other branch or main office where such moneys are deposited; that should such orders for release of the moneys be already issued, that the defendant officials be prohibited from enforcing them; and with respect to the defendant register of deeds of the province of Cebu, that he be prohibited from registering any transaction;

C. A writ of preliminary mandatory and prohibitory injunction issue against the above-named officers restraining all of them: (a) on the part of DAR adjudicators from taking further cognizance of the case or from issuing orders particularly with respect to the release of any moneys due as just compensation of the lands subject of the instant case to defendant Manuel Guy Link; (b) with respect to defendant Land Bank Officials and any other authorized representative of Land Bank of the Philippines,

the RTC to reverse/set aside the DARAB Order directing payment of just compensation to respondent Link and the DARAB Order denying their Motion for reconsideration.

Section 1, Rule II, 2002 DARAB Rules of Procedure pointedly covers this particular issue before us. It provides:

> Section 1. Primary And Exclusive Original and Appellate Jurisdiction. — The board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. x x x.

Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Development Corporation[42] clearly instructs that:

> All controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR), **even though they raise questions that are also legal or constitutional in nature. All doubts should be resolved in favor of the DAR, since the law has granted it special and original authority to hear and adjudicate agrarian matters.** (Emphasis supplied.)

In *Centeno v. Centeno*[43] we stated that:

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from releasing any such moneys to defendant Manuel "Guy" Link; (c) that should said orders for release be already issued, that the defendant DAR adjudicators and Land Bank Officials be prohibited from enforcing the same; (d) that with respect to the defendant register of deeds of the province of Cebu, that he be restrained from registering any transaction involving the lands subject of the instant case in derogation of the rights of ownership and possession of the plaintiffs. (*Rollo*, pp. 55-56.)

[42] G.R. No. 159089, 3 May 2006, 489 SCRA 80, 92-93.

[43] 397 Phil. 170, 177 (2000).

[U]nder Section 50 of R.A. 6657 (the Comprehensive Agrarian Reform Law of 1988), the DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The rule is that the DARAB has jurisdiction to try and decide any agrarian dispute or any incident involving the implementation of he Comprehensive Agrarian Reform Program.

Since the DARAB's jurisdiction over the Complaint of the petitioners had been settled, and since the DARAB had already ruled on the petitioners' objection to the payment of just compensation in favor of Link, the proper remedy for the petitioners was to question at the Court of Appeals the DARAB's Orders through a Petition for *Certiorari* under Rule 65[44] of the Rules of Court[45] as embodied under the DARAB Rules of Procedure, Rule XIV, Section 1, *viz*:

Section 1. *Certiorari to the Court of Appeals*. — Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*. x x x.

WHEREFORE, premises considered, the Petition is *DENIED*. The Decision of the Court of Appeals dated 21 February 2006 and the Resolution of the same court dated 12 May 2006 are *AFFIRMED* without prejudice to the filing of the proper case at the RTC to determine the issue of ownership. Costs against petitioners.

SO ORDERED.

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

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[44] *Certiorari,* Prohibition and *Mandamus.*

[45] *Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Development Corp., supra* note 42.

SECOND DIVISION

[G.R. No. 173804. December 10, 2008]

ELPIDIO BONDAD, JR., *Y* BURAC, *appellant, vs.* **PEOPLE OF THE PHILIPPINES,** *appellee.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); REQUIREMENTS OF THE LAW REGARDING THE CUSTODY AND CONTROL OF SEIZED DRUGS NOT COMPLIED WITH IN CASE AT BAR; NO PHYSICAL INVENTORY OF THE SEIZED DRUGS WAS CONDUCTED BY THE APPREHENDING OFFICERS.— Appellant claims that no physical inventory and photographing of the drugs took place. A reading of the testimony of the poseur-buyer, PO2 Dano indeed confirms appellant's claim. Clearly then, the apprehending police officers failed to comply with the above-quoted provision of Section 21 of R.A. No. 9165. *People v. Pringas* holds, however: *Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is* **justifiable ground** *therefor,* **and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.** Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the *preservation of the integrity and the evidentiary value of the seized items*, as the same would be utilized in the determination of the guilt or innocence of the accused. The Court's pronouncement in Pringas is based on the provision of Section 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165, *viz.*: . . . *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 and underscoring supplied) In the present case, by PO2 Dano's claim, he immediately marked the seized items which were brought to

the Crime Laboratory for examination. By his admission, however, he did not conduct an inventory of the items seized. Worse, no photograph of the items was taken. There was thus failure to faithfully follow the requirements of the law.

2. ID.; ID.; THE FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE LAW; COMPROMISED THE IDENTITY OF THE ITEMS SEIZED, WHICH IS THE *CORPUS DELICTI* OF THE CRIMES CHARGED AGAINST APPELLANT.— Unlike in *Pringas*, the defense in the present case questioned early on, during the cross examination of PO2 Dano, the failure of the apprehending officers to comply with the inventory and photographing requirements of Section 21 of R.A. No. 9165, 19 despite PO2 Dano's awareness of such requirements. And the defense raised it again during the offer of evidence by the prosecution, thus: Atty. Puentebella: xxx xxx xxx Exhibits "B" which is the brown envelope, "B-1", "B-2" and "B-3" are objected to for being product of irregular functions of police and therefore fruit of poisonous thinking [*sic*] and they are not admissible and *they were not photographed in the presence of the accused as provided for by Sec. 21, par. 1, R.A. 9165;* IN FINE, as the failure to comply with the aforesaid requirements of the law compromised the *identity* of the items seized, which is the *corpus delicti* of each of the crimes charged against appellant, his acquittal is in order. This leaves it unnecessary to still dwell on the first and third assignments of error.

APPEARANCES OF COUNSEL

Buenaventura Puentebella for appellant.
The Solicitor General for appellee.

D E C I S I O N

CARPIO MORALES, *J.*:

Elpidio Bondad, Jr., *y* Burac (appellant) was charged before the Regional Trial Court (RTC) of Marikina City[1] for violation of Section 5, paragraph 2(3), Article II of Republic Act

[1] *Rollo,* pp. 73-74.

No. 9165 (R.A. No. 9165) or the Comprehensive Dangerous Drugs Act of 2002, allegedly committed as follows:[2]

That on or about the 29th day of January 2004, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly sell to poseur buyer 0.02 gram of Methamphetamine Hydrochloride (shabu) contained in one (1) heat-sealed transparent plastic sachet, a dangerous drug, in violation of the above-cited law.[3] (Underscoring supplied)

He was likewise charged for violation of Section 11, par. 2(3), Article II also of R.A. No. 9165, allegedly committed as follows:

That on or about the 29th day of January 2004, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession direct custody and control 0.04 gram of white crystalline substance contained in two (2) heat-sealed plastic sachets which gave positive result to the test for Methamphetamine Hydrochloride (shabu), which is a dangerous drug, in violation of the above-cited law.[4] (Underscoring supplied)

The cases were lodged at Branch 272 of the RTC of Marikina.

From the evidence for the prosecution, particularly the testimony of its principal witness PO2 Edwin Dano and its documentary evidence, the following version is culled:

At around 7:05 p.m. of January 29, 2004, while PO2 Ferdinand Brubio, PO1 Christopher Anos, and PO1 Roberto Muega were at the Station Anti Illegal Drug Special Operations Task Force (SAIDSOTF), Office of the Marikina City Police Station, PO2 Nelson Arribay arrived together with a confidential informant. The confidential informant reported, among other things, about

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[2] Records, p. 2.

[3] Records, p. 2 - Information dated February 2, 2004.

[4] *Id.* at p. 6.

the rampant sale of *shabu* in a billiard hall along Bonifacio Avenue, Barangka, Marikina City and named a certain alias "Jun" as the vendor.

The Chief of the SAIDSOTF, P/Sr. Insp. Ramchrisen Haveria, Jr., at once formed a buy-bust team composed of, among others, PO2 Ramiel Soriano and PO2 Dano who was designated as the poseur-buyer. PO2 Dano was given a one hundred peso bill bearing Serial No. Q48794[5] to be used as buy-bust money. It was agreed that PO2 Dano's removal of his cap would signal that the buy-bust was consummated.

The conduct of a buy-bust operation was recorded in the police blotter and was coordinated with the Philippine Drug Enforcement Agency (PDEA) which gave it control number NOC-012904-28.

The buy-bust team, together with the confidential informant, proceeded to 3 C's billiard hall at the corner of M. Cruz St. and Bonifacio Avenue in Barangka, Marikina City. On entering the hall, the confidential informant pointed to appellant who was then holding a cue stick beside the billiard table as the alias "Jun." The confidential informant approached appellant and talked to him. Within minutes, appellant approached PO2 Dano and asked him if he wanted to buy *shabu*, to which PO2 Dano answered "*piso lang*." Appellant at once took out a "Vicks" container from his right front pocket[5] which, when opened, yielded heat-sealed plastic sachets containing substances suspected to be *shabu*. From the container, appellant drew out one sachet in exchange for which PO2 Dano gave the marked one hundred peso bill. At that instant, PO2 Dano removed his cap.

As the back-up police officers were closing-in, PO2 Dano grabbed appellant's arm, identified himself, and apprised appellant of his constitutional rights. Upon PO2 Dano's order, appellant returned the buy-bust money, handed the "Vicks" container, and gave his name as Elpidio Burac Bondad, Jr.

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[5] No specification if it was a pocket of the shirt or of the pants.

Still at the place of arrest, PO2 Dano placed the markings "EBB-ED BUYBUST 01/29/04" on the substance-filled sachet sold to him, and "EBB-ED, POS 1 and 2, 01/29/04" on the sachets that remained inside the "Vicks" container.

The buy-bust team thereupon brought appellant and the seized items to the Marikina City Police Station where a memorandum dated January 29, 2004[6] was prepared by P/Sr. Insp. Chief Haveria, Jr., addressed to the Chief of the Eastern Police District Crime Laboratory Office, requesting for the conduct of laboratory examination on the seized items to determine the presence of dangerous drugs and their weight. PO2 Dano also requested that appellant be subjected to a drug test.[7]

The following day or on January 30, 2004, at 3:00 P.M., upon receipt of three sachets, a laboratory examination was conducted thereon by Police Senior Inspector Annalee R. Forro, Forensic Chemical Officer of the Eastern Police District Crime Laboratory Office, who, in Physical Science Report No. D-0094-04E[8], recorded, among other things, the specimen submitted, her findings and conclusion as follows:

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent plastic sachets with markings marked as A through C respectively, each containing white crystalline substance with following recorded net weights and markings:

A = 0.02 gram "EBB-ED BUYBUST 01/29/04"
B = 0.02 gram "EBB-ED POSS 1 01/29/04"
C = 0.02 gram "EBB-ED POSS 2 01/29/04"

x-x-x x-x-x x-x-x

F I N D I N G S: x x x

Qualitative examination conducted on the above-stated specimen gave ***POSITIVE*** result to the tests for ***Methamphetamine Hydrochloride***, a dangerous drug.

x-x-x x-x-x x-x-x

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[6] *Id.* at p. 15.

[7] TSN, June 15, 2004, p. 41.

C O N C L U S I O N:

Specimens A through C contain ***Methamphetamine Hydrochloride***, a dangerous drug.[9] (Italics and emphasis in the original)

Denying the charges against him, appellant, a former police officer, claimed that he was framed up and gave the following version:

On January 29, 2004, while he was playing inside 3 C's billiard hall, PO2 Brubio, whom he knew was a policeman, entered the billiard hall. After greeting PO2 Brubio in *Bicolano*, he continued playing but PO2 Brubio suddenly handcuffed him and asked him "*Sumama ka muna*." Another person who was at his back pushed him out of the billiard hall in the course of which he felt PO2 Brubio reaching his (appellant's) right front pocket,[10] drawing him to restrain the hand of PO2 Brubio, telling him "*pera ko yan*!"

Aware that his son was inside the billiard hall, appellant summoned and handed him his wallet containing ₱2,000. PO2 Brubio, however, took the wallet from his son, telling him "*Huwag ka makialam dito*." He was then made to board a car and taken to the Office of the SAIDSOTF at the police station.

Appellant's defense was corroborated by his son Christian Jeffrey C. Bondad, and Roberto U. Mata who was a "spotter" (referee) at the billiard hall at the time appellant was arrested.

Finding for the prosecution, the trial court convicted appellant in both charges, disposing as follows:

WHEREFORE, foregoing premises considered, the Court finds the accused ELPIDIO BONDAD, JR. *y* BURAC guilty beyond reasonable doubt of the crime of Violation of Sec. 11 par. 2(3), Art. II of R.A. 9165 and is sentenced to suffer the penalty of imprisonment for a period of TWELVE (12) YEARS and ONE (1)

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[8] Records, p. 17.

[9] Exhibit "C", folder of exhibits, p. 2.

[10] There is also no specification if it was a pocket of the shirt or the pants.

DAY and to pay the fine of THREE HUNDRED THOUSAND PESOS (PhP300,000.00) as provided for in Sec. 11 par. 2(3), Art. II of RA 9165. The accused is likewise found guilty of the crime of Violation of Sec. 5 Art. II of RA 9165 and is sentenced to suffer the penalty of LIFE IMPRISONMENT and fine of FIVE HUNDRED THOUSAND PESOS (PhP500,00.00) pursuant to Sec. 5, Art. II of RA 9165 the methamphetamine hydrochloride (shabu) is ordered confiscated in favor of the government for proper destruction by the proper agency.

SO ORDERED.[11] (Underscoring supplied)

By Decision of February 8, 2006,12 the Court of Appeals affirmed the trial court's decision with modification, disposing as follows:

WHEREFORE, in the light of the foregoing, the appeal is DISMISSED for lack of merit. The assailed decision is AFFIRMED with the MODIFICATION that the accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.[13] (Underscoring supplied)

Specifically with respect to the charge of possession of *shabu*, the appellate court held:

The evidence for the prosecution fully proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a prohibited drug, namely, (a) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug, (b) such possession is not authorized by law and (c) the accused freely and consciously possessed said drug.

Under Section 11, Par. 2 [3] of R.A. 9165, the mere act of possessing any dangerous drug consummates the crime. There is

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[11] CA *rollo*, p. 124.

[12] Penned by Justice Amelita G. Tolentino with the concurrence of Justices Portia Aliño Hormachuelos and Vicente S.E. Veloso, CA *rollo*, pp. 232-254.

[13] *Rollo*, p. 68.

no doubt that the charge of illegal possession of *shabu* was proven beyond reasonable doubt since the accused-appellant knowingly possessed plastic sachets with white crystalline granules, without legal authority at the time he was caught during the buy-bust operation. The white crystalline granules found in his possession, upon laboratory examination, were positively identified as *methamphetamine hydrochloride* or *shabu*, a dangerous drug.[14] (Italics in the original, underscoring supplied)

Hence, the present Petition for Review on Certiorari, appellant faulting the appellate court:

I. . . . IN CONVICTING [HIM] OF THE CRIME[S] CHARGED ON THE BASIS OF THE LONE TESTIMONY OF THE POSEUR BUYER AS AGAINST THE CORROBORATED STATEMENTS OF THE ACCUSED AND HIS WITNESSES;

II. . . . IN ADMITTING THE EVIDENCE OF THE PROSECUTION DESPITE **CLEAR VIOLATION OF SECTION 21 (1) OF R.A. 9165;**

III. . . . IN COMPLETELY DISREGARDING THE CLEAR EVIDENCE ON THE EXISTENCE OF IRREGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS BY POLICE OFFICER/S IN THE CONDUCT OF THE BUY BUST OPERATIONS.[15] (Emphasis and underscoring supplied)

As the resolution of the second assignment of error is determinative of whether there is still necessity of segueing to the first and third assignments of error, it shall early on be passed upon.

Appellant claims that there was failure to follow the requirements of Sec. 21 of R.A. No. 9165, hence, it compromised the integrity and evidentiary value of the allegedly seized items.

Sec. 21 of R.A. No 9165 provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

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[14] *Id.* at p. 66 (citations omitted).

[15] *Id* at pp. 18-19.

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 or 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 persons/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official **who shall be required to sign the copies of the inventory and be given a copy thereof**; x x x (Emphasis and underscoring supplied)

Appellant claims that no physical inventory and photographing of the drugs took place. A reading of the testimony of the poseur-buyer, PO2 Dano indeed confirms appellant's claim, *viz*:

Atty. Puentebella:

When you brought him to the police, it was there that the items taken from him were inventoried, is it not?

Witness:

We did **not** make inventory because we simply brought the evidence confiscated.

x x x x x x x x x

Atty. Puentebella:

You also did not take photographs of the items taken from the accused?

Witness:

Yes, sir.

Atty. Puentebella:

And you know for a fact that under the new drugs law, this is a requirement for the apprehending team to do, is it not?

Pros. Gapuzan:

Counsel is asking for a conclusion of law. I will object.

Court:

Witness may answer the question.

Witness:

Yes, sir.

x x x x x x x x x

Atty. Puentebella:

So it is very clear now Mr. Witness that at the time you apprehended the accused, **you did not make an inventory in the presence** of the accused **nor you did not [*sic*] make a photograph** of the items seized **in the presence** of the accused, an elective official, a representative from the Department of Justice, or the media, that's very clear?

Witness:

Yes, sir.

Atty. Puentebella:

Since you did not make any inventory, it follows that you did not require them to sign your inventory as required by law?

Witness:

Yes, sir.[16] (Emphasis and underscoring supplied)

Clearly then, the apprehending police officers failed to comply with the above-quoted provision of Section 21 of R.A. No. 9165.

People v. Pringas holds, however:

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is **justifiable ground** therefor,

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[16] TSN, June 15, 2004, pp. 80-87.

***and* as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.** Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized in the determination of the guilt or innocence of the accused.[17] (Citation omitted, emphasis, italics and underscoring supplied)

The Court's pronouncement in *Pringas* is based on the provision of Section 21(a) of the Implementing Rules and Regulations[18] of R.A. No. 9165, *viz*:

x x x 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 and underscoring supplied)

In the present case, by PO2 Dano's claim, he immediately marked the seized items which were brought to the Crime Laboratory for examination. By his admission, however, he did not conduct an inventory of the items seized. Worse, no photograph of the items was taken. There was thus failure to faithfully follow the requirements of the law.

Parenthetically, unlike in *Pringas*, the defense in the present case questioned early on, during the cross examination of PO2 Dano, the failure of the apprehending officers to comply with the inventory and photographing requirements of Section 21 of R.A. No. 9165[19], despite PO2 Dano's awareness of such requirements. And the defense raised it again during the offer of evidence by the prosecution, thus:

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[17] G.R. No. 175928. August 31, 2007, 531 SCRA 828, 842-843.

[18] Took effect on November 27, 2002.

[19] *Vide* TSN, June 15, 2004, pp. 81-85.

Atty. Puentebella:

x x x x x x x x x

> Exhibits "B" which is the brown envelope, "B-1", "B-2" and "B-3" are objected to for being product of irregular functions of police and therefore fruit of poisonous thinking [*sic*] and they are not admissible and **they were not photographed in the presence of the accused as provided for by Sec. 21, par.1, R.A. 9165**;[20] (emphasis supplied)

IN FINE, as the failure to comply with the aforesaid requirements of the law compromised the identity of the items seized, which is the *corpus delicti* of each of the crimes charged against appellant,[21] his acquittal is in order.

This leaves it unnecessary to still dwell on the first and third assignments of error.

WHEREFORE, the Petition is *GRANTED*. The assailed decision is *REVERSED and SET ASIDE* and appellant, Elpidio Bondad Jr., *y* Burac, is *ACQUITED* of the crimes charged.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is directed to cause the immediate release of appellant unless he is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

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[20] TSN, August 10, 2004, pp. 6-7.

[21] *People v. Laxa*, 414 Phil. 156, 170 (2001) citing *People v. Rigodon*, 238 SCRA 27 (1994).

SECOND DIVISION

[G.R. No. 174195. December 10, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CATALINO MINGMING *y* DISCALSO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In undertaking this appellate review, we shall be guided by the outlined considerations and by the principle that an appeal opens the entire case for review. *First,* the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime. *Second,* the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense. *Third,* in rape cases, since the conviction of the accused is usually based on the accusation and testimony of the victim-complainant, her testimony should be scrutinized with utmost caution and must show clearly and definitely the commission of the rape and the identity of its perpetrator. *Fourth,* the assessment of the credibility of the prosecution witnesses, in general, and of the rape complainant, in particular, is a duty firmly lodged on the trial judge owing to his unique position; he sees, perceives and appreciates details in the case that an appellate reviewing court is realistically deprived of. Accordingly, utmost credit is given to the trial judge's findings in the absence of any showing that he misappreciated, misapprehended, or overlooked any evidentiary fact or circumstance material to the outcome of the case. *Lastly,* Catalino was charged with and convicted of three counts *of statutory* rape that, although *tried jointly,* must be treated and viewed as *separate and distinct* from each other. Thus, the elements of the offense must be proven for each count of rape, save only for the element of age which runs commonly for the three counts.

2. CRIMINAL LAW; STATUTORY RAPE; REQUIRED ELEMENTS; ESTABLISHED IN CASE AT BAR.— *Statutory rape* is committed by sexual intercourse with a woman below twelve years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary; they are not elements of *statutory* rape; the absence of free consent is conclusively presumed when the victim is below the age of twelve. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of *statutory rape*, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.

3. ID.; ID.; ID.; NO EVIDENCE OF SEXUAL INTERCOURSE OR *PENILE PENETRATION* WITH RESPECT TO THE THIRD RAPE.— We find no evidence of sexual intercourse or *penile penetration* with respect to the third rape. We stress in this regard that Catalino stands charged and convicted of rape in three criminal cases. For each of these cases, the prosecution must present evidence sufficient to overturn the constitutional presumption of innocence that the accused enjoys as a matter of right. A finding of rape is a conclusion of law that must be supported by clear and convincing evidence of the facts constituting the elements of the crime. Thus, the prosecution must adduce evidence of sexual intercourse in each of the rapes charged. In the present case, the testimony of AAA on the second and third rape charges immediately followed each other. When the prosecution asked the complainant, what she meant by the word rape, she merely replied that she was "undressed" by Catalino. Follow-up questions had to be asked by the prosecutor to establish that there was *penile penetration* of Catalino's male organ into AAA's vagina during the second rape, while no such questions were asked with respect to the third rape. In People v. Contreras, 66 the absence of conclusive proof of the carnal knowledge — that there was introduction of the accused's male organ to the complainant's vagina — led to the acquittal of the accused in one count of rape. Viewed in this light, we find Catalino's acquittal on the third rape charge to be in order.

4. ID.; ATTEMPTED RAPE; ELEMENTS THEREOF NOT PRESENT; THE DETAILED ACTS OF EXECUTION SHOWING AN ATTEMPT TO RAPE ARE SIMPLY LACKING.— We are keenly aware that without proof of penetration, the crime committed may still constitute attempted rape or acts of lasciviousness. Attempted rape, however, requires that the offender commence the commission of rape directly by overt acts but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. The prosecution must, therefore, establish the following elements of an attempted felony: 1. The offender commences the commission of the felony directly by overt acts; 2. He does not perform all the acts of execution which should produce the felony; 3. The offender's act be not stopped by his own spontaneous desistance; 4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. The evidence on record does not show that the above elements are present, The detailed acts of execution showing an attempt to rape are simply lacking. Thus, we cannot hold Catalino liable for attempted rape.

5. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS; ELEMENT OF LASCIVIOUS CONDUCT OR LEWD ACT ON THE PART OF THE ACCUSED IS NOT SUPPORTED BY EVIDENCE.— Neither can we hold him liable for acts of lasciviousness under Article 336 of the Revised Penal Code, as amended. This crime requires proof of the existence of the following elements: 1. That the offender commits any act of lasciviousness or lewdness. 2. That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age. 3. That the offended party is another person of either sex. While the second and third elements of the offense are sufficiently established, the element of lascivious conduct or lewd act on the part of the accused is not supported by the available evidence. Hence, we cannot conclude that Catalino committed acts of lasciviousness as defined and penalized under the Revised Penal Code.

6. ID.; QUALIFYING CIRCUMSTANCES; MUST BE BOTH ALLEGED AND PROVED.— *Statutory rape* is penalized under Article 266-A(1), paragraph (d) of the Revised Penal

Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997. The crime carries the penalty of *reclusion perpetua* unless attended by the qualifying circumstances defined under Article 266-B. In the present case, evidence confirms the use of deadly weapon (a knife) during the commission of the offense, this should be a qualifying circumstance that would raise the imposable penalty to *reclusion perpetua* to death. We cannot, however, recognize this circumstance as qualifying. When the law or rules specify certain circumstances that can aggravate an offense, or circumstances that would attach to the offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proved to justify the imposition of the increased penalty. When a circumstance is not so alleged, it cannot affect the penalty and the corresponding civil liabilities in line with our ruling in *People v. Nuguid* and *People v. Sagarino.*

7. ID.; PENALTIES; PROPER PENALTY.— We find that the CA and the RTC correctly imposed the penalty of *reclusion perpetua* for each of the **first and second rapes**. We also sustain the awards of civil indemnity, moral damages and exemplary damages in the two cases in accordance with prevailing jurisprudence on the matter. Civil indemnity is awarded upon the finding of rape. Similarly, moral damages are awarded to rape complainants without need of pleading or proof of its basis; the law assumes that a rape complainant actually suffered moral injuries entitling her to the award. Exemplary damages, on the other hand, are awarded in rape cases to serve as deterrent against the commission of this bestial offense. Catalino's acquittal of the third rape charged necessarily carries the deletion of the accompanying awards of civil indemnity and damages made by the lower courts.

8. ID.; ID.; VICTIM IN CASE AT BAR WAS A DEFENSELESS YOUNG GIRL SUBDUED INTO OBEDIENCE AND SUBMISSION BY A VERY MUCH OLDER MAN WHO HAD LUST IN HEART AND HIS LOAN; THE AGE DISPARITY ALONE BETWEEN THE VICTIM AND THE ACCUSED SPEAKS VOLUMES ABOUT THE POWER RELATIONSHIP AND HOW IT FACILITATED THE SEXUAL ACTS THAT TOOK PLACE.— AAA's testimony shows that even before the first rape incident, she was already afraid of Catalino who was a frequent visitor of the Obispos

being a drinking buddy of Joel Obispo. She became afraid of him when he got mad at her for not obeying his orders to buy liquor. This fear reached the point when she could no longer obey his orders because she was already "too afraid" of him. This fear was further heightened when he threatened to kill them after the first rape. It was under these circumstances that the rapes of June 29, 1998 took place. AAA testified that in the morning of that day, she passed by Catalino's house and she saw him there doing nothing. At around 8 a.m. of that same day, she and her little brother were alone in the Obispo house when Catalino came on the pretext of asking her to buy cigarettes for him. At the same time, he asked her to get the money (for the cigarettes) at his house. 51 Despite her fears (*Kinabahan po ako*!), she did as she was told. It was while at Catalino's house that she was attacked. These facts sufficiently explain why AAA was at Catalino's house in the morning of June 29, 1998. Plainly and simply, she was a defenseless young girl subdued into obedience and submission by a very much older man who had lust in his heart and his loins. The age disparity alone — AAA's 10 years and Catalino's 50 years — speaks volumes about this power relationship and how it facilitated the sexual attacks that took place.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING A RAPE IS *PER SE* NOT SUFFICIENT BASIS TO DISBELIEVE AN ALLEGATION OF RAPE.— We do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The *heavy psychological and social toll* alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt. The effects of threats and the fear that they induce must also be factored in. At least one study shows that the decisive factor for non-reporting and the failure to prosecute a rape is *the lack of support — familial, institutional and societal — for the rape victim, given the unfavorable socio-cultural and policy environment*. All these, to our mind, speak for themselves in negating the conclusion that a delay in reporting a rape is *per se* sufficient basis to disbelieve an

allegation of rape. The more reasonable approach is to take the delay into account but to disregard it if there are justifiable explanations for the victim's prolonged silence. In the present case, it appears that AAA was ready to suffer the first rape in silence had it not been from the succeeding sexual attacks that forced her to seek the Obispos' assistance. Thus, due to the threats, she remained silent and only broke it when the accused repeated the sexual attack. Apparently, the subsequent attacks brought her silence to the breaking point, forcing her to come out in the open to prevent and avoid further repetitions.

10. ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM IS SUFFICIENT TO CONVICT THE ACCUSED IF IT MEETS THE TEST OF CREDIBILITY.— Catalino's second argument focuses on what he saw as incompability between the physical (medical) evidence and AAA's testimony since she had healed lacerations when she was medically examined on July 2, 1998 or 4 days after the June 29, 1998 incidents. This argument assumes that the healed laceration pertains to the June 29, 1998 attacks and forgets that before us are three incidents of rape, the first one occurring at least a month earlier (in May 1998). Additionally, the absence of fresh lacerations in the victim's hymen does not negate sexual intercourse, nor does it prove that she was not raped; a hymenal laceration or its absence is merely corroborative evidence that is not indispensable to a finding of rape. In the words of the Solicitor General, *whether the private complainant sustained injuries other than that noted on her hymen by reason of the commission of the crimes is a collateral matter. It had nothing to do with proving the elements of the crime*. What is essential is proof of carnal knowledge between the accused and the victim, *i.e.*, that there be at least penile contact with the latter's labia **even without the laceration of her hymen**. Ultimately, a conviction for rape rests on the complainant's testimony on the details of the crime. If her testimony meets the test of credibility, that alone is sufficient to convict the accused.

11. ID.; ID.; ID.; ABSENCE OF ILL-MOTIVE STRENGTHENS THE CREDIBILITY AND VALIDITY OF THE VICTIM'S CHARGES; CASE AT BAR.— Catalino tries to impress upon this Court that AAA filed a rape case because she was mad at him. This argument, however, is not supported by evidence on record and is in fact contradicted by Catalino's own testimony

that he had little interaction with AAA because he was always at work. In the normal course of things, anger happens or is aroused by a specific reason; such reason will hardly exist if one has very little interaction with another. Catalino's failure to effectively cite an ill motive for AAA's charges, to our mind, all the more strengthens AAA's credibility and the validity of her charges. Catalino also contradicts himself when he claimed that the grudge Joel Obispo bore against him is the reason for the rape charges laid; later in his testimony, he admitted that he did not know of any person who would convince AAA to accuse him of rape. Separately from this contradiction, we simply cannot believe that a woman in her right mind would lend her name and concoct a story of repeated rapes to serve the ends of another person's grudge. Even at her young age, AAA knew that the rapes she suffered carry a stigma of shame. For her to come out in the open and publicly describe her experience at a trial can only be taken as a badge of her sincerity and the truth of her charges.

12. ID.; ID.; ID.; DEFENSES OF ALIBI AND DENIAL; NECESSARILY FAILS WHEN THERE IS POSITIVE EVIDENCE OF THE PHYSICAL PRESENCE OF THE ACCUSED AT THE CRIME SCENE; VICTIM'S IDENTIFICATION OF THE ACCUSED AS HER RAPIST IS POSITIVE CLEAR AND CATEGORICAL.— Our judicial experience teaches us that *denial* and *alibi* are the common defenses used in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. We have always held that these two defenses are **inherently weak** and must be supported by clear and convincing evidence in order to be believed. Moreover, being **negative defenses**, they cannot prevail over the positive testimony of the complainant. For *alibi* to prosper it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time. *Alibi* necessarily fails when there is positive evidence of the physical presence of the accused at the crime scene. As the evidence stands, AAA has shown that Catalino was a neighbor whom she knew because he was a regular visitor of the Obispos and a "drinking buddy" of Joel Obispo; that Catalino was the one who raped her at a vacant lot at noontime in May 1998;

and it was Catalino who again sexually assaulted her at his (Catalino's) house in the morning of June 29, 1998. AAA's identification of Catalino as the rapist was positive, clear and categorical.

13. ID.; ID.; ID.; ACCUSED COULD HAVE EASILY BEEN AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION.— As against these assertions is Catalino's *alibi* that he was in Sangandaan, Caloocan City (his place of work) at the time of the rape. We take judicial notice that Quezon City and Caloocan City are directly adjoining cities whose distance from one another does not render it impossible for Catalino to have been at the scene of the rape in the May 1998 rape. We agree, too, with the CA's finding that, even granting he was at work on June 29, 1998, his alibi that he was in Sangandaan, Caloocan City cannot be given merit because Sangandaan is within the *vicinity* of the crime scene. *He could have easily been at the scene of the crime at the time of its commission.* We likewise give little weight to his claim that he was at work during the June 29, 1998 incidents. This is an uncorroborated claim as he even failed to show by evidence that he was in fact employed.

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.*:

The subject of this mandatory appeal is the Decision dated July 28, 2005 of the Court of Appeals (*CA*) in CA-G.R. CR.-H.C. No. 00149[1] which affirmed with modification the decision dated March 22, 2004 of the Regional Trial Court (*RTC*), Branch 128, Caloocan City, in Criminal Case Nos. C-54195,

[1] *Rollo*, pp. 3-16; penned by Associate Justice Amelita G. Tolentino of the Ninth Division with Associate Justice Roberto A. Barrios (deceased) and Associate Justice Vicente S.E. Veloso, concurring.

C-54196, and C-54197.[2] The RTC convicted accused-appellant Catalino Mingming *y* Discalso[3] (*Catalino*) of three (3) counts of *statutory rape* and imposed on him the penalty of *reclusion perpetua* for each count. The Informations (all dated July 6, 1998) under which he was prosecuted read:

Criminal Case No. C-54195

That sometime on *(sic)* May, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully *(sic)*, unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin, and 10 years of age.

Contrary to Law.

Criminal Case No. C-54196

That on or about the 29th day of June, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully *(sic)*, unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin, and 10 years of age.

Contrary to Law.

and,

Criminal Case No. C-54197

That on or about the 29th of June, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully *(sic)*, unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin and 10 years of age.

Contrary to Law.

Catalino was arraigned on September 1, 1998 with the assistance of counsel and pleaded "not guilty" to the charges.

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[2] Penned by Judge Silvestre H. Bello; CA *rollo*, pp. 17-23; the RTC ordered the accused-appellant to pay for each count of rape the amount of ₱50,000.00 as civil indemnity, and ₱25,000 as exemplary damages in addition to the award of ₱50,000.00 as moral damages.

[3] Also referred to as "Taling" in the records.

At the trial on the merits, the prosecution presented testimonial[4] and documentary[5] evidence, while the defense relied on *denial* and *alibi* testified to by the accused himself.

ANTECEDENT FACTS

Ten-year old AAA[6] and her younger brother, CCC, were residents of Barangay Deparo, Caloocan City. They lived in the house of Alfonso Obispo (*Alfonso*) to whom their father entrusted their care. Catalino was their neighbor.

Sometime in May 1998 at noontime, AAA answered the call of nature outside Alfonso's house.[7] She went to a vacant lot behind a Petron gas station located away from Alfonso's house. While there, Catalino appeared, grabbed and pulled her right ankle, causing her to fall to the ground. AAA tried to break away but Catalino clung to her ankle and pulled her to a portion of the lot with tall grasses where he laid her down on bundles of wood (*pahigang kahoy*). To subdue her, Catalino covered

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[4] During the trial, the prosecution presented five (5) witnesses, namely: (1) AAA; (2) BBB, the complainant's mother; (3) Barangay Executive Officer Durana; (4) SPO1 Mabalot; and (5) Dr. Jonathan Seranillo, before resting its case.

[5] The documentary pieces of evidence and their respective submarkings are: (1) Birth Certificate of AAA (*Exh.* "A"); (2) *Sinumpaang Salaysay* dated July 3, 1998 of AAA (*Exh.* "B"); (3) Referral Slip sent by the Chief Caloocan City Police Station, Sub Station 5, Isaias C. Antonio, to the Office of the City Prosecutor, Caloocan City; (4) Joint Affidavit dated July 3, 1998 of SPO1 Mabalot and Barangay Executive Officer Durana; (5)Entry in the Barangay Blotter dated July 1, 1998 (*Exh.* "E"); (6) Mission Order dated November 12, 1999 (*Exh.* "F"); and (7) Medico-legal Report dated July 2, 1998 (Initial Laboratory Report) prepared by Dr. Llamas (*Exh.* "G").

[6] The real name of the victim as well as those of her immediate family members is 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, January 26, 1999, p. 6, and February 1, 1999, p. 8.

her mouth and poked a kitchen knife at her neck, at the same time undressing her by removing her shorts and panty. Thereafter, he removed his own shorts, placed himself on top of AAA, and proceeded to have sexual intercourse with her by inserting his penis into her vagina. During the sexual intercourse, Catalino held AAA's hands to prevent her from pushing him. Done with the act, he threatened her, *"Huwag kang magsusumbong, papatayin ko kayo."*[8] AAA went home and kept what transpired to herself.

The incident was repeated in the morning of June 29, 1998 when Catalino tricked AAA into going to his house, ostensibly to get money for cigarettes he had ordered AAA to buy. Catalino followed her and there, pulled her and again threatened her with a knife.[9] He then undressed her and himself, and proceeded to have sexual intercourse with her. The sexual abuse was repeated on the same day before AAA went home.

This time, AAA reported the incidents to the Obispos. Alfonso, his son (Joel Obispo)[10] and AAA reported the rapes to then Barangay Executive Officer Humphrey Durana,[11] who endorsed the report to the police. SPO1 Emilio E. Mabalot[12] conducted the police investigation and thereafter referred AAA to Dr. Anthony Llamas, a Philippine National Police medico-legal officer, for medical examination. The genital examination disclosed a deep-healed laceration at the 6 o'clock position of her hymen indicating that she was no longer a virgin. The Initial Laboratory Report[13] dated July 2, 1998 states:

GENITAL:

... On separating the same disclosed a congested posterior fourchette and a membranous-type hymen with a deep healed laceration at the 6[o]' clock position. External vaginal orifice admits the tip of the examiner's smallest finger.

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[8] TSN, February 1, 1999, p. 14.

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

[10] Also referred to as "Boy" in the records.

CONCLUSION:

Subject is in non-virgin state physically.
There are no external signs of application of any form of physical trauma.[14]

BBB,[15] the mother of AAA, learned that her daughter had been sexually molested when she received a letter from the Department of Social Welfare and Development, Caloocan City. She allegedly suffered mental anguish for what happened to AAA and also incurred expenses in filing cases against Catalino.

Catalino denied raping AAA although he admitted knowing her.[16] He claimed that he seldom saw her since he went to work early and came home late.[17] He further claimed that at the time of the alleged first incident, AAA had been with her father and only returned to the Obispos on June 20, 1998.[18] He also claimed that the cases were filed against him because he refused to lend the ₱3,000.00 that the Obispos needed for their rental payment.[19] In fact, Joel Obispo even remarked to him that *"Madamot ka, may mangyayari sa inyo."* It was after that incident that Alfonso and Joel had him arrested on the charge of raping AAA. They brought him to the barangay office where a *tanod* boxed him to force him to admit the rape.[20]

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[11] TSN, July 5, 1999, pp. 1-10; and TSN, July 12, 1999, pp. 2-3.

[12] TSN, June 14, 1999, pp. 2-8.

[13] *Records*, p. 160.

[14] Dr. Jonathan Seranillo, a Philippine National Police medico-legal officer took the witness stand to testify on the medico-legal report prepared by Dr. Llamas; TSN, November 22, 1999, p. 3.

[15] TSN, July 5, 1999, pp. 10-18.

[16] TSN, July 9, 2001, p. 5.

[17] *Id.*, pp. 8 and 16.

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

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

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

The RTC rejected Catalino's defenses of *denial* and *alibi* and found him guilty of three counts of rape. On appeal,[21] the CA affirmed Catalino's conviction with a modification on the award of damages.[22] The dispositive portion of the appellate court's decision states:

> **WHEREFORE**, premises considered, the decision of the court *a quo* finding Catalino Mingming y Discalso guilty of three (3) counts of Statutory rape is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is sentenced to suffer the penalty of three (3) *reclusion perpetua* to be served *successively* and that the accused-appellant is ordered to pay the victim, for each count of rape, the amount of P50,000.00 as civil indemnity and P25,000.00 as exemplary damages, in addition to the P50,000.00 moral damages awarded by the trial court.
>
> Costs against the accused-appellant.
>
> SO ORDERED.[23]

The CA affirmed the RTC decision on the basis of AAA's testimony which it found credible. The CA, in this regard, said:

> The testimony of AAA is positive while that of the accused is negative. The positive prevails over the negative. Being a ten-year old minor, AAA, a victim of sexual assault, is credible. She has not yet absorbed the wiles of the world. Her testimony, considering her very young age, was straightforward and candid. It is sufficient to convict the accused.
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> x x x x x x x x x
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> .... The spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony

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[21] Previously made to this Court, but we transferred the case to the CA for intermediate review *via* our Resolution dated September 22, 2004, pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[22] Resolution dated September 22, 2004; *rollo*, p. 29.

[23] *Rollo*, pp. 15-16.

of the victim coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.[24]

At the same time, the CA disbelieved Catalino's defense that AAA had ill motives and was influenced by Joel Obispo who bore a grudge against Catalino. The CA took note that it was AAA herself who caused the filing of the cases against him.[25] Similarly, the CA discredited the defense's argument that the absence of injuries negated the commission of rape; to the CA, the physical evidence, as established from the medical findings of Dr. Llamas, corroborated her testimony that she had been raped.[26] The CA noted that rape can be established even in *the absence of external signs or physical injuries or a medical finding relating to such fact as these are not indispensable requisites in proving a crime of rape*.[27]

Catalino filed the present petition after the CA denied his motion for reconsideration in its Resolution dated May 8, 2006.

ASSIGNMENT OF ERRORS

Catalino argues that the CA committed the following errors:

1. giving credence to the speculative, incredible, and inconsistent testimony of the private complainant; and

2. finding him guilty beyond reasonable doubt of the crime charged.

Jointly discussing these issues in his *Brief*,[28] Catalino highlights the errors committed by both the CA and the RTC in believing AAA's testimony. He phrased this argument in the following terms:[29]

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[24] *Id.*, pp. 11-12.

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

[26] *Ibid.*

[27] *Ibid.*

[28] Brief for the Accused-Appellant; *CA rollo*, pp. 32-42.

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

In prosecution for rape, the testimony of the victim is generally scrutinized with great caution for the crime is usually known to her and the rapist (**People *vs.* Ibay, 312 SCRA 153**). In the case at bar, the private complainant's testimony is not convincing.

He advances the view that AAA's testimony suffered from serious flaws that should generate disbelief for being contrary to human experience. Catalino further submits that: AAA's failure to report the rape; her lack of physical injuries; her testimony that he was holding a knife on one hand, and at the same time covering her mouth with the other while he was undressing her; and that she even went to his house after the first incident — all demonstrate the incredibility of her testimony. Catalino posits that the rape charges against him were concocted by AAA because she was mad at him.[30] He particularly emphasizes that the medical findings of Dr. Llamas showed that a mere three (3) days after the alleged rape, the laceration found in AAA's genital organ was already healed,[31] thus medically giving lie to the rape charge.

Catalino finally avers that his defenses of *denial* and *alibi* have been amply established and should not be disregarded given that the private complainant's credibility is doubtful.

The Office of the Solicitor General maintains the correctness of Catalino's conviction as the prosecution's evidence — premised on the credible testimony of AAA — established his guilt beyond reasonable doubt on all three counts of *statutory* rape.

OUR RULING

We affirm Catalino's conviction in Criminal Cases No. C-54195 and No. C-54196 but acquit him in Criminal Case No. C-54197.

In undertaking this appellate review, we shall be guided by the outlined considerations and by the principle that an appeal opens the entire case for review.[32]

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[30] TSN, February 1, 1999, p. 7.

[31] See Supplemental Brief; *rollo*, pp. 27-32.

[32] *People v. Tonyacao*, G.R. Nos. 134531-52, July 7, 2004, 433 SCRA 513, 521; *People v. Castillo*, G.R. No. 132895, March 10, 2004, 425 SCRA

First, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.

Second, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.

Third, in rape cases, since the conviction of the accused is usually based on the accusation and testimony of the victim-complainant, her testimony should be scrutinized with utmost caution and must show clearly and definitely the commission of the rape and the identity of its perpetrator.

Fourth, the assessment of the credibility of the prosecution witnesses, in general, and of the rape complainant, in particular, is a duty firmly lodged on the trial judge owing to his unique position; he sees, perceives and appreciates details in the case that an appellate reviewing court is realistically deprived of. Accordingly, utmost credit is given to the trial judge's findings in the absence of any showing that he misappreciated, misapprehended, or overlooked any evidentiary fact or circumstance material to the outcome of the case.

Lastly, Catalino was charged with and convicted of three counts *of statutory* rape that, although *tried jointly*, must be treated and viewed as *separate and distinct* from each other. Thus, the elements of the offense must be proven for each count of rape, save only for the element of age which runs commonly for the three counts.

Statutory rape is committed by sexual intercourse with a woman below twelve years of age regardless of her consent, or

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136, 159; *People v. Arves*, G.R. Nos. 134628-30, October 13, 2000, 343 SCRA 123, 138; and *People v. Castillo*, G.R. Nos. 131592-93, February 15, 2000, 325 SCRA 613, 619.

the lack of it, to the sexual act.[33] Proof of force, intimidation or consent is unnecessary; they are not elements of *statutory* rape; the absence of free consent is conclusively presumed when the victim is below the age of twelve.[34] At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.[35] Thus, to convict an accused of the crime of *statutory rape*, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.

The prosecution presented proof of the presence of the required elements. The age of AAA, who was only 10 years old at the time of the incidents complained of, is shown by her *Birth Certificate*; she was born on May 3, 1988[36] while the alleged rapes were committed in May and June 1998. On the other hand, the prosecution established Catalino's identification as the perpetrator through the victim's positive identification in court.[37] AAA categorically testified to the act of sexual intercourse, identifying the perpetrator in the process. By established jurisprudence, sexual intercourse is shown by proof of entry or the introduction of the male organ into the female organ; rape is consummated by the mere "touching" or "entry" of the penis into the *labia majora* or the *labia minora* of the *pudendum* of the victim's genitalia.[38] The required physical act and its surrounding details were described by AAA when she testified as quoted below.

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[33] *People v. Jalosjos*, G.R. Nos. 132875-76, November 16, 2001, 369 SCRA 179, 219.

[34] *People v. Escultor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 667.

[35] *People v. Jalosjos*, *supra* note 33, p. 219.

[36] *Record*, p. 152.

[37] TSN, January 26, 1999, p. 5.

[38] *People v. Aguiluz*, G.R. No. 133480, March 15, 2001, 354 SCRA 465, 472.

On the first rape in May 1998, she stated:

Q When Taling pulled you in the grassy portion at the back of the Petron, what did he do next?
A Taling undress[ed] me, sir.

Q What were you wearing then?
A I was wearing short[s] and T-shirt.

Q Did he remove all your clothings?
A Yes, sir. [TSN, January 26, 1999, p. 7]

x x x x x x x x x

Q You said that Taling removed his shorts, after Taling removed his shorts, what did he do next?
A He inserted his penis, sir.

Q Where did he insert his penis?
A He inserted his penis into my vagina.

Q And when he inserted his penis into your vagina, what is your position then?
A I was lying, sir.

Q And when he inserted his penis into your vagina, how did you feel?
A It was painful, sir.[*Id.*, p. 8]

On the second rape committed on June 29, 1998, AAA averred:

Q And when he pulled you inside his house, what happened next?
A He did something bad to me.

Q Will you tell us what was bad that he did to you?
A He again raped me, sir.

Q When you said he again raped you, what do you mean rape?
A He undressed me, sir.

Q And what were you wearing then?
A I was wearing T-shirt and shorts.

Q And what clothing did he remove[d] from you?
A My shorts and panty.

Q And after he removed your shorts and panty what did he do next?
A He also undressed himself.

x x x x x x x x x

Q After removing his shorts, what did he do next?
A He inserted his penis, sir. [*Id.*, p. 15]

Fiscal Ralar to Witness -

Q Where did he insert his penis?
A [In]to my vagina. [*Id.*, p. 16]

Catalino's plea for exoneration

Catalino mainly argues that AAA's testimony is not believable. Arrayed against each other, however, his version of events do not measure up to the same level of credibility that AAA's version has attained for being sincere, consistent, and fully in accord with common human experience.

First, Catalino attacks AAA's testimony for her delay in reporting the rape. This imputed delay, however, can only refer to the rape that occurred in May 1998; she reported the rapes of June 29, 1998 on the same day they were committed. In any case, we do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The *heavy psychological and social toll* alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt. The effects of threats and the fear that they induce must also be factored in. At least one study shows that the decisive factor for non-reporting and the failure to prosecute a rape is *the lack of support — familial, institutional and societal — for the rape victim, given the unfavorable socio-cultural and policy environment.*[39] All these,

[39] *Justice and Healing: Twin Imperatives for the Twin Laws Against Rape* by Atty. Soliman M. Santos, Jr., Merci Llarinas-Angeles, and Roberto M. Ador, *Philippine Legislators' Committee on Population and Development Foundation, Inc*. http://www.childprotection.org.ph as of September 30, 2008.

to our mind, speak for themselves in negating the conclusion that a delay in reporting a rape is *per se* sufficient basis to disbelieve an allegation of rape. The more reasonable approach is to take the delay into account but to disregard it if there are justifiable explanations for the victim's prolonged silence.

In the present case, it appears that AAA was ready to suffer the first rape in silence had it not been from the succeeding sexual attacks that forced her to seek the Obispos' assistance. This was apparent from her testimony when she declared:[40]

> Fiscal Ralar to Witness —
>
> Q Before Taling left when *(sic)* he sexually abused you at the back of Petron, did he threaten you?
> A Yes, sir.
>
> Q How did he threaten you?
> A He told me that he will kill us.
>
> x x x x x x x x x
>
> Q Why did you not tell your lolo Alfonso what Taling did to you?
> A I was afraid.
>
> Q To whom are you afraid?
> Taling.
>
> Q Why were you afraid?
> A Because he threatened us sir. [TSN, January 26, 1999, p. 11]

Thus, due to the threats, she remained silent and only broke it when the accused repeated the sexual attack. Apparently, the subsequent attacks brought her silence to the breaking point, forcing her to come out in the open to prevent and avoid further repetitions.

Second, Catalino's second argument focuses on what he saw as incompability between the physical (medical) evidence and AAA's testimony since she had healed lacerations when she

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[40] TSN, January 26, 1999, pp. 10-11.

was medically examined on July 2, 1998 or 4 days after the June 29, 1998 incidents.

This argument assumes that the healed laceration pertains to the June 29, 1998 attacks and forgets that before us are three incidents of rape, the first one occurring at least a month earlier (in May 1998). Additionally, the absence of fresh lacerations in the victim's hymen does not negate sexual intercourse, nor does it prove that she was not raped;[41] a hymenal laceration or its absence is merely corroborative evidence that is not indispensable to a finding of rape. In the words of the Solicitor General, *whether the private complainant sustained injuries other than that noted on her hymen by reason of the commission of the crimes is a collateral matter*.[42] *It had nothing to do with proving the elements of the crime*.[43] What is essential is proof of carnal knowledge between the accused and the victim, *i.e.*, that there be at least penile contact with the latter's labia **even without the laceration of her hymen**.[44] Ultimately, a conviction for rape rests on the complainant's testimony on the details of the crime. If her testimony meets the test of credibility, that alone is sufficient to convict the accused.[45]

Third, AAA's presence in Catalino's house (where the second and third rapes allegedly took place) on June 29, 1998 despite having suffered an earlier rape, has to be viewed in the larger context of Catalino's relationship with AAA in order to be fully understood as a circumstance that should not adversely affect AAA's credibility.

AAA's testimony shows that even before the first rape incident, she was already afraid of Catalino who was a frequent visitor of the Obispos being a drinking buddy of Joel Obispo.[46] She

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[41] *People v. Aguiluz, supra* note 38, p. 472.

[42] Brief for the Plaintiff-Appellee, pp. 9-10.

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

[44] *People v. Aguiluz, supra* note 38, p. 472.

[45] *Ibid*.

[46] TSN, February 1, 1999, pp. 5-6.

became afraid of him when he got mad at her for not obeying his orders to buy liquor.[47] This fear reached the point when she could no longer obey his orders because she was already "too afraid" of him.[48] This fear was further heightened when he threatened to kill them after the first rape.[49]

It was under these circumstances that the rapes of June 29, 1998 took place. AAA testified that in the morning of that day, she passed by Catalino's house and she saw him there doing nothing.[50] At around 8 a.m. of that same day, she and her little brother were alone in the Obispo house when Catalino came on the pretext of asking her to buy cigarettes for him. At the same time, he asked her to get the money (for the cigarettes) at his house.[51] Despite her fears (*Kinabahan po ako!*), she did as she was told. It was while at Catalino's house that she was attacked.

These facts sufficiently explain why AAA was at Catalino's house in the morning of June 29, 1998. Plainly and simply, she was a defenseless young girl subdued into obedience and submission by a very much older man who had lust in his heart and his loins. The age disparity alone — AAA's 10 years and Catalino's 50 years – speaks volumes about this power relationship and how it facilitated the sexual attacks that took place.

Fourth, Catalino tries to impress upon this Court that AAA filed a rape case because she was mad at him. This argument, however, is not supported by evidence on record and is in fact contradicted by Catalino's own testimony that he had little interaction with AAA because he was always at work.[52] In the normal course of things, anger happens or is aroused by a specific reason; such reason will hardly exist if one has very little interaction with another. Catalino's failure to effectively cite an ill motive

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

[48] *Id.*, p. 7.

[49] TSN, January 26, 1999, p. 11, and TSN, February 1, 1999, p. 14.

[50] TSN, January 26, 1999, pp. 5-6.

[51] *Id.*, pp. 12-13.

[52] TSN, July 9, 2001, p. 17.

for AAA's charges, to our mind, all the more strengthens AAA's credibility and the validity of her charges.

Catalino also contradicts himself when he claimed that the grudge Joel Obispo bore against him is the reason for the rape charges laid; later in his testimony, he admitted that he did not know of any person who would convince AAA to accuse him of rape.[53] Separately from this contradiction, we simply cannot believe that a woman in her right mind would lend her name and concoct a story of repeated rapes to serve the ends of another person's grudge. Even at her young age, AAA knew that the rapes she suffered carry a stigma of shame. For her to come out in the open and publicly describe her experience at a trial can only be taken as a badge of her sincerity and the truth of her charges. As we held in *People v. Dimaano:*[54]

> The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint. In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.

Denial and alibi

Our judicial experience teaches us that *denial* and *alibi* are the common defenses used in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. We have always held that these two defenses are **inherently weak** and must be supported by clear and convincing evidence in order to be believed. Moreover, being **negative defenses**, they cannot prevail over the positive testimony of the complainant.[55]

For *alibi* to prosper it is not enough for the defendant to prove that he was somewhere else when the crime was committed;

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[53] *Id.*, pp. 12 and 17.

[54] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658.

[55] *People v. Bon,* G.R. No. 166401, October 20, 2006, 506 SCRA 168, 185.

he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[56] *Alibi* necessarily fails when there is positive evidence of the physical presence of the accused at the crime scene.

As the evidence stands, AAA has shown that Catalino was a neighbor whom she knew because he was a regular visitor of the Obispos and a "drinking buddy" of Joel Obispo;[57] that Catalino was the one who raped her at a vacant lot at noontime in May 1998;[58] and it was Catalino who again sexually assaulted her at his (Catalino's) house in the morning of June 29, 1998.[59] AAA's identification of Catalino as the rapist was positive, clear and categorical.

As against these assertions is Catalino's *alibi* that he was in Sangandaan, Caloocan City (his place of work) at the time of the rape.[60] We take judicial notice that Quezon City and Caloocan City are directly adjoining cities whose distance from one another does not render it impossible for Catalino to have been at the scene of the rape in the May 1998 rape. We agree, too, with the CA's finding that, even granting he was at work on June 29, 1998, his alibi that he was in Sangandaan, Caloocan City cannot be given merit because Sangandaan is within the *vicinity* of the crime scene. *He could have easily been at the scene of the crime at the time of its commission.*[61] We likewise give little weight to his claim that he was at work during the June 29, 1998 incidents. This is an uncorroborated claim as he even failed to show by evidence that he was in fact employed.[62]

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[56] *Id.,* pp. 185-186.

[57] TSN, February 1, 1999, p. 6.

[58] TSN, January 26, 1999, p. 6.

[59] *Id.,* pp. 12 and 15.

[60] TSN, July 9, 2001, p. 24.

[61] CA Decision dated July 28, 2005, p. 10.

[62] TSN, July 9, 2001, pp. 24-25.

Criminal liability

From the evidence presented, we hold that the prosecution amply established the age of the victim. She was ten years old on the dates of the rapes charged as evidenced by her *Birth Certificate*.

The prosecution likewise adduced sufficient evidence showing the sexual intercourse between Catalino and AAA on the first and second rapes (*i.e.*, one in May 1998 and another on June 29, 1998). We see no reason to doubt the sincerity of AAA's testimony regarding Catalino's sexual attacks. As we have ruled in not a few cases, when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed.[63] Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation; she does so only in her desire to rectify an injustice and to punish the offender.[64]

However, we find no evidence of sexual intercourse or *penile penetration* with respect to the third rape. We stress in this regard that Catalino stands charged and convicted of rape in three criminal cases. For each of these cases, the prosecution must present evidence sufficient to overturn the constitutional presumption of innocence that the accused enjoys as a matter of right. A finding of rape is a conclusion of law that must be supported by clear and convincing evidence of the facts constituting the elements of the crime. Thus, the prosecution must adduce evidence of sexual intercourse in each of the rapes charged.

In the present case, the testimony of AAA on the second and third rape charges immediately followed each other. When the prosecution asked the complainant, what she meant by the word rape, she merely replied that she was "undressed" by Catalino.

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[63] *People v. De Guzman,* G.R. Nos. 140333-34, December 11, 2001, 372 SCRA 95, 109.

[64] *Id.,* pp. 109-110.

Follow-up questions had to be asked by the prosecutor to establish that there was *penile penetration* of Catalino's male organ into AAA's vagina during the second rape, while no such questions were asked with respect to the third rape.[65] AAA's testimony with respect to the third rape charge merely stated:

Q How many times did accused Taling rape you on June 29, 1998?
A Two times, sir. [TSN, January 26, 1999, pp. 16-17]

Fiscal Ralar to Witness -

Q In what place did he rape you for the second time?
A In his house, sir.

Q At what time did the accused rape you for the second time?
A Also at that time sir. [*Id.*, p. 17]

In *People v. Contreras*,[66] the absence of conclusive proof of the carnal knowledge — that there was introduction of the accused's male organ to the complainant's vagina — led to the acquittal of the accused in one count of rape. Viewed in this light, we find Catalino's acquittal on the third rape charge to be in order.

In making this conclusion, we are keenly aware that without proof of penetration, the crime committed may still constitute attempted rape or acts of lasciviousness.[67] Attempted rape, however, requires that the offender commence the commission of rape directly by overt acts but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[68] The prosecution must, therefore, establish the following elements of an attempted felony:

1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act be not stopped by his own spontaneous desistance;

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[65] TSN, January 26, 1999, p. 15.

[66] G.R. Nos. 137123-34, August 23, 2000, 338 SCRA 622, 640.

4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[69]

The evidence on record does not show that the above elements are present, The detailed acts of execution showing an attempt to rape are simply lacking. Thus, we cannot hold Catalino liable for attempted rape.

In the same manner, neither can we hold him liable for acts of lasciviousness under Article 336 of the Revised Penal Code, as amended. This crime requires proof of the existence of the following elements:

1. That the offender commits any act of lasciviousness or lewdness.
2. That it is done under any of the following circumstances:
   a. By using force or intimidation; or
   b. When the offended party is deprived of reason or otherwise unconscious; or
   c. When the offended party is under 12 years of age.
3. That the offended party is another person of either sex.[70]

While the second and third elements of the offense are sufficiently established, the element of lascivious conduct or lewd act on the part of the accused is not supported by the available evidence. Hence, we cannot conclude that Catalino committed acts of lasciviousness as defined and penalized under the Revised Penal Code.

The Proper Penalty

S*tatutory rape* is penalized under Article 266-A(1), paragraph (d) of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997. The crime carries the

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[67] *People v. Abanilla*, G.R. Nos. 148673-75, October 17, 2003, 413 SCRA 654, 666.

[68] *Ibid*.

[69] *People v. Contreras*, *supra* note 66, p. 644.

[70] *Id.,* p. 646.

penalty of *reclusion perpetua* unless attended by the qualifying circumstances defined under Article 266-B.

In the present case, evidence confirms the use of deadly weapon (a knife) during the commission of the offense, this should be a qualifying circumstance that would raise the imposable penalty to *reclusion perpetua* to death. We cannot, however, recognize this circumstance as qualifying. When the law or rules specify certain circumstances that can aggravate an offense, or circumstances that would attach to the offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proved to justify the imposition of the increased penalty.[71] When a circumstance is not so alleged, it cannot affect the penalty and the corresponding civil liabilities in line with our ruling in *People v. Nuguid*[72] and *People v. Sagarino*.[73]

On the basis of this analysis of the applicable law, we find that the CA and the RTC correctly imposed the penalty of *reclusion perpetua* for each of the **first and second rapes**. We also sustain the awards of civil indemnity, moral damages and exemplary damages in the two cases in accordance with prevailing jurisprudence on the matter.[74] Civil indemnity is awarded upon the finding of rape.[75] Similarly, moral damages are awarded to rape complainants without need of pleading or proof of its basis; the law assumes that a rape complainant actually suffered moral injuries entitling her to the award.[76] Exemplary damages, on the other hand, are awarded in rape cases to serve as deterrent against the commission of this bestial offense.[77]

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[71] *People v. Nuguid,* G.R. No. 148991, January 21, 2004, 420 SCRA 533, 559.

[72] *Ibid.*

[73] G.R. Nos. 135356-58, September 4, 2001, 364 SCRA 438, 449.

[74] *People v. Limos,* G.R. Nos. 122114-17, January 20, 2004, 420 SCRA 183, 205; SEE: *People v. Moriño,* G.R. No. 176265, April 30, 2008; and *People v. Jusayan,* 428 SCRA 228 (2004).

[75] *People v. Jalosjos, supra* note 33, p. 220.

[76] *People v. Dimaano, supra* note 56, p. 670.

[77] *People v. Sagarino, supra* note 73, p. 450.

Catalino's acquittal of the third rape charged necessarily carries the deletion of the accompanying awards of civil indemnity and damages made by the lower courts.

WHEREFORE, premises considered, we hereby *AFFIRM* the decision dated July 28, 2005 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00149 insofar as it finds Catalino Mingming y Discalso guilty of *statutory rapes* in Criminal Cases No. C-54195 and No. C-54196. We *REVERSE* and *SET ASIDE* his conviction in Criminal Case No. C-54197.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174988. December 10, 2008]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **SPS. HOMOBONO AND LUZDELDIA TARAMPI,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; WRIT OF POSSESSION; ISSUANCE THEREOF BECOMES MINISTERIAL DUTY OF THE COURT UPON PROPER APPLICATION IF THE MORTGAGED PROPERTY IS NOT REDEEMED WITHIN THE REGLEMENTARY PERIOD.— The Court finds that Branch 220 did not err in giving due course to respondents' Notice of Appeal. In *Metropolitan Bank and Trust Company v. Tan,* the Court, resolving the issue of whether it is an appeal or a petition for

certiorari that is the proper remedy to assail an order granting a writ of possession to the purchaser of mortgaged property subject of an extrajudicial foreclosure in accordance with Act No. 3135, held: Finally, we agree with Metrobank's contention that the trial court's *order granting the writ of possession is final*. The *proper remedy* for respondents *is an appeal* and not a petition for certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved. In the case at bar, respondents failed to redeem the mortgages within the reglementary period, hence, ownership of the property covered thereby was consolidated in the name of petitioner who had in fact been issued a new TCT. Issuance of a writ of possession thus became a ministerial duty of the court. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. *Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a* **ministerial** *duty of the court*.

2. ID.; ID.; ID.; ID.; THE COURT NEED NOT LOOK INTO THE VALIDITY OF THE MORTGAGES OR THE MANNER OF FORECLOSURE; THE WRIT ISSUES AS A MATTER OF COURSE AND THE COURT NEITHER EXERCISES ITS OFFICIAL DISCRETION NOR JUDGMENT.— Branch 105 *need not, under the circumstances, look into the validity of the mortgages or the manner of their foreclosure.* The writ issues as a matter of course, and the court neither exercises its official discretion nor judgment. The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership. To underscore this mandate, the law further

provides that the debtor-mortgagor may petition that the sale be set aside and the writ of possession cancelled in the proceedings in which possession was requested; and the court's decision thereon may be appealed by either party, *but the order of possession shall continue in effect during the pendency of the appeal*. To stress the ministerial character of the writ of possession, the Court has disallowed injunction to prohibit its issuance, just as it has held that its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself. Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment — a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.

APPEARANCES OF COUNSEL

Benedicto Versoza Gealogo and Burkley Law Offices for petitioner.

Pacifico C. Tadao for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1995, spouses Homobono and Luzdeldia Tarampi (respondents) obtained loans from Bank of Philippine Islands (petitioner) in the total amount of ₱19,000,000, which were secured by four sets of real estate mortgage over a parcel of land located at Tandang Sora, Quezon City, with an area of 796 square meters and covered by Transfer Certificate of Title (TCT) No. 122627 issued by the Registry of Deeds of Quezon City.[1]

Respondents defaulted on their obligation, prompting petitioner to institute extrajudicial foreclosure proceedings. At the auction sale on February 8, 1999, the mortgaged property was sold to

[1] Records, pp. 79-115, 117.

petitioner as the highest bidder. A Certificate of Sale[2] was thereupon issued to petitioner which was registered and annotated on the TCT.

As the redemption period expired without respondents redeeming the mortgages, petitioner, through its Vice-President Jocelyn C. Sta. Ana, executed an Affidavit of Consolidation.[3] TCT No. 122627 was thus cancelled and TCT No. N-216396[4] was in its stead issued in the name of petitioner on July 27, 2000.

Petitioner thereafter filed on October 9, 2000 an *Ex Parte* Petition for Writ of Possession[5] over the property including all the improvements thereon, docketed as LRC Case No. Q-13412(00), which was raffled to Branch 105 of the RTC of Quezon City.

By Order of October 1, 2001,[6] Branch 105 granted petitioner's *Ex Parte* Petition for the issuance of Writ of Possession. Acting on respondents' "urgent motion for leave to admit attached opposition and dismissal of petition [for issuance of writ of possession]" filed on November 23, 2001 due to the pendency, before Branch 220 also of the RTC of Quezon City, of an action for *annulment of the real estate mortgages*, Civil Case No. Q-00-41440, Branch 105, by Order of December 18, 2002,[7] suspended the implementation of the writ of possession until the determination of the validity of the mortgages by Branch 220.

On petitioner's Motion for Reconsideration,[8] Branch 105 recalled its Order of December 18, 2002, by Order of August 6,

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[2] *Id.* at 12.

[3] *Id.* at 15-16.

[4] *Id.* at 17.

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

[6] *Id.* at 20.

[7] *Id.* at 267-271.

[8] *Id.* at pp. 272-274.

2003,[9] and set for hearing respondents' Opposition to the petition for issuance of writ of possession which Opposition it treated as a petition under Section 8 of Act No. 3135, as amended reading:

> SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six, and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (Underscoring supplied)

In the meantime, petitioner filed a Motion for Immediate Implementation of the Writ of Possession,[10] which Branch 105 granted by Order of February 7, 2006.[11] In the same Order, the court ordered that respondents' Opposition to the issuance be "consolidated with Civil Case No. Q-00-41440 [for Annulment of Mortgages] pending at Branch 220."

On February 24, 2006, respondents filed a Notice of Appeal[12] of the Order dated February 7, 2006 of Branch 105 granting the implementation of the writ of possession. Petitioner opposed,[13] arguing primarily that the motion for the issuance of a writ of possession is *ex parte* and the order granting is interlocutory,

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[9] *Id.* at 343-347.

[10] *Id.* at 424-426.

[11] *Id.* at 634-637.

[12] *Id.* at 640-642.

[13] *Id.* at 644-647.

hence, not appealable. To this respondents filed a Reply,[14] maintaining that their right to appeal is based on Section 14 of Act No. 496, otherwise known as The Land Registration Act.[15]

Branch 220 to which respondents' Opposition was referred, as earlier stated, for consolidation with the annulment of mortgages case, by Order dated June 30, 2006,[16] gave due course to respondents' Notice of Appeal. Petitioner's Motion for Reconsideration[17] of the June 30, 2006 Order of Branch 220 having been denied by Order of September 27, 2006,[18] it comes before this Court *via* the present petition for review on *certiorari*.

In the meantime, the Court of Appeals, to which respondents appealed the Order of Branch 105 granting the implementation of the writ of possession, dismissed the appeal, by Decision dated May 27, 2008 in CA-G.R. CV. No. 87902.[19] It held, among other things, that since petitioner is now the registered owner of the property, it is entitled to a writ of possession as a matter of right; and that any question regarding the validity of the mortgages or their foreclosure cannot be a legal ground for refusing the issuance of a writ of possession after the consolidation of title in the buyer's name, following the debtor-mortgagor-respondents' failure to redeem the mortgages, citing *Idolor v. Court of Appeals.*[20]

The *issues* for resolution are thus (1) whether Branch 220 erred in giving due course to respondents' Notice of Appeal

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[14] *Id.* at 648-653.

[15] Section 14 of Act No. 496 provides in relevant part:

SEC. 14. Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, or judgment of a Court of First Instance might be reviewed x x x

[16] Records, p. 654.

[17] *Id.* at 656-659.

[18] *Id.* at 809.

[19] *Rollo*, pp. 334-341.

[20] G.R. No. 161028, January 31, 2005, 450 SCRA 396.

from Branch 105's Order granting petitioner's motion for immediate implementation of the writ of possession, and (2) whether the writ of possession should be implemented during the pendency of the case for annulment of mortgages.

Petitioner maintains that the proceedings in the issuance of a writ of possession are *ex parte* in nature,[21] and the order granting the issuance of a writ of possession is not appealable as it is merely interlocutory. And it posits that since it is already the registered owner of the subject property, its right to possession has become unquestionable.[22]

Respondents, on the other hand, counter that the real estate mortgages over the subject property do not clearly set out their legal obligation, hence, the extrajudicial foreclosure was not justified; and that a writ of possession cannot issue in favor of petitioner before the annulment case is decided by Branch 220.[23]

The Court finds that Branch 220 did not err in giving due course to respondents' Notice of Appeal. In *Metropolitan Bank and Trust Company v. Tan*,[24] the Court, resolving the issue of whether it is an appeal or a petition for *certiorari* that is the proper remedy to assail an order granting a writ of possession to the purchaser of mortgaged property subject of an extrajudicial foreclosure in accordance with Act No. 3135, held:

> Finally, we agree with Metrobank's contention that the trial court's **order granting the writ of possession is final**. The **proper remedy** for respondents **is an appeal** and not a petition for certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

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[21] *Rollo,* pp. 10-11.

[22] *Id.* at 13.

[23] *Id.* at 220-227.

[24] G.R. No. 159934, June 26, 2008.

In the case at bar, respondents failed to redeem the mortgages within the reglementary period, hence, ownership of the property covered thereby was consolidated in the name of petitioner who had in fact been issued a new TCT. Issuance of a writ of possession thus became a ministerial duty of the court.

> It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a **ministerial** duty of the court.[25] (Emphasis and underscoring supplied)

Branch 105 need not, under the circumstances, look into the validity of the mortgages or the manner of their foreclosure.[26] The writ issues as a matter of course, and the court neither exercises its official discretion nor judgment.[27]

The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership.[28] To underscore this mandate, the law further provides that the debtor-mortgagor may petition that the sale be set aside and the writ of possession cancelled in the proceedings in which possession was requested; and the court's decision thereon may be appealed

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[25] *Sueno v. Land Bank of the Philippines,* G.R. No. 174711, September 17, 2008.

[26] *Fernandez v. Sps. Espinoza,* G.R. No. 156421, April 14, 2008, 551 SCRA 136.

[27] *Vide Dayrit v. Philippine Bank of Communications,* 435 Phil. 120 (2002); *A.G. Development Corporation v. Court of Appeals,* 346 Phil. 136 (1997).

[28] *Vide Sps. Ong v. Court of Appeals,* 388 Phil. 857 (2000).

by either party, **but the order of possession shall continue in effect during the pendency of the appeal**.[29]

To stress the ministerial character of the writ of possession, the Court has disallowed injunction to prohibit its issuance, just as it has held that its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[30]

Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court.[31] The same is true with its implementation; otherwise, the writ will be a useless paper judgment – a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.

WHEREFORE, the petition is *PARTIALLY GRANTED*. Branch 105 of the Regional Trial Court of Quezon City, which issued the Writ of Possession in favor of petitioner, is DIRECTED to immediately proceed with the implementation thereof.

SO ORDERED.

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

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[29] Section 8, Act No. 3135, as amended by Act No. 4118.

[30] *Philippine National Bank v. Sanao Marketing Corporation,* G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[31] *Chailease Finance Corporation v. Sps. Ma,* 456 Phil. 498 (2003).

SECOND DIVISION

[G.R. No. 177656. December 10, 2008]

LINDA UY LIM, *petitioner, vs.* **HELEN O. TONG, PHILIP ONG, PROPMECH CORPORATION represented by its Manager, Eulogio Saremo, Sr., and ATTY. ELMER D. LASTIMOSA, Ex-Officio Provincial Sheriff,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FRAUD IS NEVER PRESUMED AND INTENTIONAL ACTS TO DECEIVE AND DEPRIVE ANOTHER OF HIS RIGHT OR IN SOME MANNER INJURE HIM MUST BE SPECIFICALLY ALLEGED AND PROVED BY THE PLAINTIFF BY CLEAR AND CONVINCING EVIDENCE.— Fraud is never presumed, and intentional acts to deceive and deprive another of his right or in some manner injure him must be specifically alleged and proved by the plaintiff by clear and convincing evidence. By petitioner's admission, she read the SPA before signing it. She is a college graduate who had worked as a Regional Operations Clerk of Metrobank. It is inconceivable that she did not understand the contents of what she was signing. In fact, her allegation in her complaint that she agreed to sign the SPA believing that the "intention and purpose behind the same was to secure a loan *with which to build the house* that [she] had long dreamed of to be erected [on] the lot in question" confirms that she agreed to authorize the attorneys-in-fact to perform the acts therein enumerated including encumbering the property by way of mortgage.

2. REMEDIAL LAW; CIVIL PROCEDURE; A PARTY TO A CASE SHOULD DECIDE EARLY ON WHAT VERSION HE IS GOING TO ADOPT; A CHANGE OF THEORY IN LATER STAGE OF THE PROCEEDINGS IS IMPERMISSIBLE, NOT DUE TO THE STRICT APPLICATION OF THE RULES, BUT BECAUSE IT IS CONTRARY TO THE RULES OF FAIR PLAY, JUSTICE, AND DUE PROCESS.— That petitioner and her husband indeed

obtained and received the proceeds of a ₱400,000 loan, respondents were able to prove via testimonial and documentary evidence. At the witness stand, as well as before the Court of Appeals and this Court, petitioner posited a different claim — that she signed the SPA merely as a formality to guarantee her husband's supposed advances in the sum of ₱400,000, and not intended to authorize respondents to mortgage the property, she having believed her husband's assurance that said advances would be deducted from his salaries and commissions in the course of his employment at the corporation. A party to a case should decide early on what version he is going to adopt. A change of theory in the later stage of the proceedings is impermissible, not due to the strict application of procedural rules, but because it is contrary to the rules of fair play, justice, and due process. Petitioner's subsequent position thus fails.

3. ID.; EVIDENCE; NO TESTIMONIAL NOR DOCUMENTARY EVIDENCE TO ESTABLISH THE P600,000.00 ADDITIONAL OBLIGATION REPRESENTING THE AMOUNT ALLEGEDLY DEFALCATED BY PETITIONER'S HUSBAND.— The Court at once notes that there is neither testimonial nor documentary evidence to show how the amount of ₱600,000.00, which was added to the spouses' obligation, representing the amount allegedly defalcated by Saturnino was arrived at. Neither is there any documentary evidence that the said alleged defalcated amount was made known to Saturnino. A photocopy of a November 28, 1995 handwritten letter-Exhibit "21", purportedly written by Saturnino admitting "the wrongdoings", and a photocopy of a December 6, 1995 typewritten letter-Exhibit "22"-Exhibit "A" attributed to Saturnino wherein he recalls having taken company funds in the amount of "about 100 to 200 thousands (sic)", may not be appreciated without violating, among other things, Rule 130, Section 3 of the Rules of Court. Respondents' witness Atty. Garcia in fact conceded at the time he took the witness stand that respondents "still do not have the final [amount]" claimed to have been defalcated by Saturnino. In another vein, at the time the SPA was executed in 1994, there was yet no defalcated amount of Saturnino to speak of. Petitioner and her husband could not, therefore, have considered securing an inexistent or future unspecified liability.

APPEARANCES OF COUNSEL

Vencer Lacap & Associates Law Offices for petitioner.
Garcia Ines Villacarlos & Garcia Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In mid-1994, Linda Uy Lim (petitioner) and her husband Saturnino Lim (Saturnino), also known as "Amay Lim," executed a Special Power of Attorney (SPA)[1] in favor of respondents Philip Ong (Ong) and Helen Tong (Helen), president and treasurer, respectively, of their co-respondent Propmech Corporation (the corporation) where Saturnino worked as sales manager. The SPA authorized Ong and Helen:

1. To MORTGAGE or ENCUMBER the properties described hereinbelow in favor of any individual, person or entity for the purpose of obtaining or securing a loan, indebtedness or monetary obligation:

   "Transfer Certificate of Title No. T-50103"

   A parcel of land x x x

   x x x x x x x x x

   of which we are the registered owners as evidenced by TCT No. T-50103 of the Registry of Deeds of General Santos City; and

2. To TRANSMIT, APPLY, and REMIT the entire proceeds of the mortgage to PHILIP L. ONG and/or HELEN O. TONG, their heirs, successors or assigns, for the purpose of fully satisfying the outstanding obligations of the principals herein; and

3. To MAKE, EXECUTE, SIGN and DELIVER any and all pertinent documents and/or instruments relative to the foregoing authority.[2] (Underscoring supplied)

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[1] Exhibit "D", folder of exhibits of the plaintiffs, pp. 12-13.

[2] *Ibid*.

The property subject of the SPA covered by TCT No. T-50103 was registered on September 21, 1992 in the name of petitioner "Linda U. Lim . . . married to Saturnino Lim."[3] About two years from the execution of the SPA or on May 8, 1996, the property was made the subject of a Real Estate Mortgage executed by Lim's attorney-in-fact Helen in favor of the corporation to secure a "₱1,000,000 obligation" which the Lim spouses purportedly obtained from it.[4] The Deed of Real Estate Mortgage contained, among other things, the following provision:

x x x x x x x x x

2. It is the essence of this contract that if the MORTGAGORS shall well and truly pay or cause to be paid their obligation of ONE MILLION PESOS (₱1,000,000.00) on or before June 30, 1996, then this Mortgage shall become null and void and of no effect; otherwise, the same shall remain in full force and effect and shall be enforceable in the manner provided by law.[5]

In late 1996, petitioner received a Notification of Foreclosure[6] of the mortgage. She subsequently received a Sheriff's Notice of Public Auction Sale[7] scheduled on January 8, 1997, drawing her to file on January 3, 1997 before the Regional Trial Court (RTC) of General Santos City a Complaint[8] against attorneys-in-fact Helen and Ong, along with the corporation and Ex-Officio Provincial Sheriff Atty. Elmer Lastimosa, for annulment of mortgage, injunction and damages with application for temporary restraining order.

Petitioner claimed that her husband Saturnino, from whom she had in the meantime been separated and had not heard from, obtained her signature on the SPA through fraud by

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[3] Exhibit "F", *id.* at 16.

[4] Exhibit "C", *id.* at 7-11.

[5] *Id.* at 8.

[6] Exhibit "A", *id.* at 1-2.

[7] Exhibit "E", *id.* at 15.

[8] Records, pp. 2-8.

representing to her that the purpose was to secure a loan with which to build a house; that she had never been indebted to, and had not received any amount from the corporation, hence, the Real Estate Mortgage is null and void; and that the property subject of the mortgage which she claims to be her paraphernal property "was actually being sequestered to answer and pay for certain shortages and other liabilities incurred by her husband in the course of [his] employment with the defendant corporation."[9]

The sheriff cancelled/deferred the sale of the property scheduled on January 8, 1996 until further advice from the parties.[10]

In their Answer with Compulsory Counterclaim,[11] respondents Helen, Ong, and the corporation alleged that petitioner co-signed the SPA empowering the first two respondents to mortgage the property for "the purpose of fully satisfying the[ir] outstanding obligation"; and that petitioner received the amount of ₱405,000 [*sic*] in 1994 and November 1995 from respondents representing "a portion of the loan . . . for the purpose of building a house."

On February 17, 1997, Branch 22 of the General Santos City RTC ordered the Ex-Officio Provincial Sheriff, his agents, and deputies to cease and desist from proceeding with the public auction[12] of the property.

Evidence for respondents shows as follows:

In 1994, on the request of petitioner and her husband, the corporation granted them a loan of ₱400,000, evidenced by checks and deposit slips.[13] The corporation later discovered that Saturnino misappropriated corporate funds bringing his total obligation, including the ₱400,000 loan, to ₱1,000,000. When confronted about the misappropriated amount, Saturnino and

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[9] *Id.* at 3.

[10] *Id.* at 17.

[11] *Id.* at 25-31.

[12] *Id.* at 46.

[13] Exhibits "4"-"8", folder of exhibits for the defendants, pp. 1-5.

petitioner begged the corporation not to file any case against Saturnino, they promising to pay the obligation within a reasonable period. Ong and Helen agreed. The spouses welched on their promise, however, hence, Helen, as attorney-in-fact, executed the Deed of Real Estate Mortgage and subsequently indorsed it to the sheriff for foreclosure proceedings.

By Decision of October 30, 2001, the trial court declared that the Real Estate Mortgage was legally executed[14] and accordingly dismissed petitioner's complaint. Petitioner's Motion for Reconsideration was denied.[15]

On appeal, the Court of Appeals affirmed[16] the trial court's decision. Her Motion for Reconsideration[17] having been denied,[18] petitioner filed the present Petition for Review on *Certiorari*,[19] alleging that the Court of Appeals erred in

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. . . UPHOLDING THE VALIDITY OF THE SPURIOUS SPECIAL POWER OF ATTORNEY AND THE CONSEQUENT REAL ESTATE MORTGAGE IN A MANNER CONTRARY TO LAW AND THE SETTLED PRONOUNCEMENTS OF THIS HONORABLE TRIBUNAL.

II

X X X IN UPHOLDING THE COURT A QUO'S FINDINGS THAT THE PARAPHERNAL PROPERTY OF THE PETTITIONER-APPELLANT (*sic*) IS LIABLE TO THE ALLEGED PERSONAL DEBT OF HER ESTRANGED HUSBAND ABSENT ANY PROOF THAT THE SAME REDOUNDED TO THE FAMILY'S BENEFIT.

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[14] Records, pp. 230-239.

[15] *Id.* at 242-249, 261.

[16] Decision of April 26, 2006, penned by Justice Normandie B. Pizarro, with the concurrence of Justices Edgardo A. Camello and Ricardo R. Rosario; CA *rollo*, pp. 142-152.

[17] *Id.* at 187-213.

[18] *Id.* at 247-248.

[19] *Rollo*, pp. 11-50.

III

X X X IN DENYING THE MOTION FOR RECONSIDERATION.[20] (Underscoring supplied)

Fraud is never presumed, and intentional acts to deceive and deprive another of his right or in some manner injure him must be specifically alleged and proved by the plaintiff by clear and convincing evidence.[21]

By petitioner's admission, she read the SPA before signing it.[22] She is a college graduate[23] who had worked as a Regional Operations Clerk of Metrobank.[24] It is inconceivable that she did not understand the contents of what she was signing. In fact, her allegation in her complaint that she agreed to sign the SPA believing that the "intention and purpose behind the same was to secure a loan with which to build the house that [she] had long dreamed of to be erected [on] the lot in question"[25] confirms that she agreed to authorize the attorneys-in-fact to perform the acts therein enumerated including encumbering the property by way of mortgage.

That petitioner and her husband indeed obtained and received the proceeds of a ₱400,000 loan, respondents were able to prove via testimonial and documentary evidence:

[ATTY. VILLACARLOS]

Q: Mr. Witness [EULOGIO SAREMO, JR., FINANCIAL CONSULTANT OF PROPMECH CORPORATION], aside from the special power of attorney which was executed by the spouses Saturnino Lim and Linda Lim, what other proofs

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

[21] *Vide Heirs of Salvador Hermosilla v. Remoquillo*, G.R. No. 167320, January 30, 2007, 513 SCRA 403, 412 (citations omitted).

[22] TSN, March 19, 1997, p. 31.

[23] *Id.* at 30.

[24] TSN, April 29, 1997, p. 42.

[25] Records, p. 3.

do you have of the indebtedness of Amay Lim with respect to Propmech Corporation and the other defendants?

A: The spouses once approached me way back in the middle part of 1994 and they were asking from the company some assistance because they would be constructing a house.[26]

x x x x x x x x x

Q: Do you know how much is the money being borrowed by the spouses?

A: I think it is approximately ₱400,000.00 to ₱500,000.00 or thereabouts. That was the agreed amount.

Q: What is your proof as far as this remittance of ₱400,000.00 to ₱500,000.00 is concerned?

A: **Several checks**[27] were made to the order of Ms. Linda Lim sometime in April, May, June and up to October 1995. Series of checks were presented and delivered to Linda Lim.

x x x x x x x x x

Q: I am also showing to you certain **deposit slips**[28] for a savings account. Can you please tell us what relation have these to the loan of Mr. Amay Lim and Mrs. Linda Lim?

A: These represent various sums deposited in the account of Ms. Linda Lim aside from the checks mentioned. x x x

x x x x x x x x x

Q: Mr. Witness, what documents were executed to evidence this particular loan of the plaintiff and her husband?

A: Four documents were prepared.

Q: And can you please tell us what are those documents?

A: One is a **special power of attorney**; another is a promissory note; another is the mortgage contract; and another one is the undertaking. We have not put the specific amount because

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[26] TSN, August 4, 1997, p. 65.

[27] Exhibits "4"-"6", folder of exhibits for the defendants, pp. 1-3.

[28] Exhibits "7"-"8", *id.* at 4-5.

at that time we did not know the exact amount…

Q: Of these four documents you mentioned, did the spouses execute these documents?

A: They apparently signed the special power of attorney only.

x x x x x x x x x.[29]

(Emphasis and underscoring supplied)

At the witness stand, as well as before the Court of Appeals and this Court, petitioner posited a different claim — that she signed the SPA merely as a formality to guarantee her husband's supposed advances in the sum of ₱400,000, and not intended to authorize respondents to mortgage the property,[30] she having believed her husband's assurance that said advances would be deducted from his salaries and commissions in the course of his employment at the corporation.

A party to a case should decide early on what version he is going to adopt. A change of theory in the later stage of the proceedings is impermissible, not due to the strict application of procedural rules, but because it is contrary to the rules of fair play, justice, and due process.[31] Petitioner's subsequent position thus fails.

Respecting the execution of the Deed of Real Estate Mortgage to secure not only the payment of the ₱400,000 loan but also Saturnino's alleged personal liability to the corporation, respondents' witness Atty. Reynaldo Cruz Garcia testified:

[ATTY. VILLACARLOS]

Q: Mr. Witness, considering that the spouses, as you testified to earlier, were not able to satisfy their accountability to the company, what action did you take in order to satisfy the accountability of the plaintiff to the defendants?

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[29] TSN, February 20, 1998, pp. 138-141.

[30] TSN, February 28, 1997, p. 27; *rollo*, p. 24; CA *rollo*, p. 31.

[31] *Vide Dalisay v. Mauricio, Jr.*, A.C. No. 5655, January 23, 2006, 479 SCRA 307, 316 (citations omitted).

A: Actually, we requested the person to whom the special power of attorney was issued to execute a mortgage, and this was also upon the request of the spouses.

Q: Can you expound on this statement of yours that the execution of a real estate mortgage was upon the request of the spouses?

A: Few months after they borrowed the money and executed the special power of attorney and delivered the documents to us, we discovered upon my investigation here in General Santos city that Mr. Amay Lim had been defalcating most of the company's collections. So we called them back to Manila, and they begged and cried there for several hours that no case be filed; that all their debts would be paid within a reasonable period of time. Because of their begging, my clients relented and allowed them some time to pay their debt. But they failed to do so, so I advised my client to collect from them.

Q: So a real estate mortgage was executed?

A: Yes, it was executed because of that.[32] (Emphasis supplied)

x x x x x x x x x

[ATTY. VENCER]

Q: x x x [W]hen was that when the couple requested you to prepare the real estate mortgage?

A: At various instances, from the moment I investigated Mr. Saturnino Lim and again when Ms. Linda Lim and Mr. Saturnino Lim were summoned for confrontation at the office sometime in December 1995, wherein Saturnino Lim admitted in front of me and several witnesses, including his wife, that he was on drugs and has defalcated **some** money from the company. Linda Lim cried for hours that time and pleaded for time so that they could pay.

Q: In other words, per your testimony, the couple practically pleaded to you and you said Linda Lim was crying?

A: Yes, sir, and they were willing to give anything at that time.

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[32] TSN, February 20, 1998, pp. 143-144.

Q: Why did you not request Linda Lim and Saturnino Lim to execute the mortgage themselves because they apparently were telling you to please do everything?

A: Because at that time my client, Helen Tong, started to cry and she pitied the couple.

Q: Even then, why did you not prepare the mortgage?

A: I wanted to, but because of humanitarian consideration to the couple, I did not insist at that particular moment.

Q: And when was the time that you insisted?

A: When they dishonored their promise that they would pay within a very short period of time.

Q: When was that?

A: January 1996, February 1996. Out of shame they said to just do everything to diminish their obligation.[33] (Emphasis and underscoring supplied)

The Court at once notes that there is neither testimonial nor documentary evidence to show how the amount of ₱600,000, which was added to the spouses' obligation, representing the amount allegedly defalcated by Saturnino was arrived at. Neither is there any documentary evidence that the said alleged defalcated amount was made known to Saturnino. A photocopy of a November 28, 1995 handwritten letter-Exhibit "21,"[34] purportedly written by Saturnino admitting "the wrongdoings," and a photocopy of a December 6, 1995 typewritten letter-Exhibit "22"-Exhibit "A"[35] attributed to Saturnino wherein he recalls having taken company funds in the amount of "about 100 to 200 thousands," may not be appreciated without violating, among other things, Rule 130, Section 3 of the Rules of Court which reads:

When the subject of an inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

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

[34] Folder of exhibits for the defendants, p. 19.

[35] *Id.* at 20.

(a) When the original has been lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror.

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.[36]

Respondents' witness Atty. Garcia in fact conceded at the time he took the witness stand that respondents "still do not have the final [amount]"[37] claimed to have been defalcated by Saturnino.

In another vein, at the time the SPA was executed in 1994, there was yet no defalcated amount of Saturnino to speak of. Petitioner and her husband could not, therefore, have considered securing an inexistent or future unspecified liability.

IN FINE, the Deed of Real Estate Mortgage is valid only insofar as it secured the ₱400,000 loan extended by the corporation to petitioner and her husband Saturnino for the construction of their house. This leaves it unnecessary to still dwell on petitioner's claim that the encumbered property is paraphernal to free it from her husband's personal liability.

WHEREFORE, the petition is **IN PART GRANTED.** The April 26, 2006 Decision of the Court of Appeals is AFFIRMED with MODIFICATION. The questioned Deed of Real Estate Mortgage executed by attorney-in-fact respondent Helen O. Tong is declared valid insofar as it secured the ₱400,000 loan secured by petitioner Linda Uy Lim and her husband Saturnino Lim

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[36] The original of Exhibits "21" and "22"/"A" were not presented in court. *Vide* records, p. 143, TSN, August 5, 1997, pp. 120-122.

[37] TSN, February 20, 1998, p. 168.

from respondent corporation, but NULL AND VOID insofar as it is made to secure the ₱600,000 allegedly representing the personal obligation of Saturnino Lim to respondent corporation.

SO ORDERED.

Quisumbing, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 178198. December 10, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EVELYN BOHOL *y* TALAOGAN *a.k.a.* EVELYN BOHOL,** *a.k.a.* **EVELYN BOHOL DAVIS, *a.k.a.* DIANITA BOHOL DAVIS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF APPELLATE COURTS WHEN DULY SUPPORTED BY SUFFICIENT AND CONVINCING EVIDENCE ARE ACCORDED HIGH RESPECT EVEN FINALITY AND ARE NOT DISTURBED ON APPEAL.— As this Court has consistently said, where the culpability or innocence of an accused would hinge on the issue of the credibility of witnesses, the findings of fact of the CA affirming those of the trial court, duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court, and are not to be disturbed on appeal. The only exception is when certain facts of substance and value have been overlooked which, if considered, might affect the result of the case.

2. ID.; ID.; CREDIBILITY OF WITNESSES; APPELLANT OFFERED NO EVIDENCE TO SHOW THAT WITNESS WAS ACTUATED BY AN ILL OR DEVIOUS MOTIVE TO TESTIFY AGAINST HER.— Moreover, as enunciated in

People v. Bocalan, the simple fact that Robin was originally charged with the appellant as a co-conspirator but was later discharged as a state witness and was no longer prosecuted for the crime charged does not render his testimony incredible or lessen its probative weight. Otherwise stated, the barefaced fact that Robin was charged as a co-conspirator in the commission of the crime before he was discharged as a state witness does not disqualify him as a witness or discredit his testimony. While his testimony should be taken with caution, there is no reason why it cannot be given credence, it appearing that the same was corroborated by the testimony of his wife who happens to be appellant's sister. Besides, appellant offered no evidence to show that Robin was actuated by an ill or devious motive to testify against her.

3. ID.; ID.; ID.; TESTIMONY OF WITNESS CORROBORATED THE PHYSICAL EVIDENCE.— Appellant's claim that Robin testified against her only because he was motivated by his desire to be exculpated from his liability as a co-conspirator is likewise bereft of merit. Considering his close relationship with the appellant, the latter being his sister-in-law, there was no other reason for Robin to have testified against the appellant except his desire to tell the truth. This was bolstered by the fact that appellant's own sister corroborated Robin's testimony. More importantly, Robin's testimony was corroborated by physical evidence, namely, the autopsy report that Steven sustained four gunshot wounds at the upper left portion of his back, including four bullet holes at the back of his upper left arm, just below the shoulder, which was thus consistent with his testimony that upon seeing Steven who was then asleep, Arnold fired four consecutive shots upon the former, hitting him at the back.

4. ID.; ID.; ID.; DEFENSE OF ALIBI; IT WAS POSSIBLE FOR APPELLANT TO BE AT THE PLACE WHERE THE CRIME WAS COMMITTED; APPELLANT'S ABSENCE FROM THE PLACE OF COMMISSION DOES NOT NEGATE HER CULPABILITY.— Appellant seeks refuge in the defense of alibi which we have consistently regarded as the much abused sanctuary of felons and which is considered as an argument with a bad reputation. It is, to say the least, the weakest defense which must be taken with caution being easily fabricated. Such defense cannot prevail over the positive identification of appellant as one of the conspirators in killing Steven. Though

she did not participate in the actual shooting of Steven, it was sufficiently established that she traveled from Angeles City to Makati City, together with the assailants; she waited for the assailants inside the car; and she traveled back to Angeles City, again with her co-conspirators, after the commission of the felony. Furthermore, appellant failed to establish that it was physically impossible for her to have been at the scene of the crime at the time of its commission. Angeles City is only a few kilometers away from Makati and only a few hours of travel by land. This is coupled by the fact that when Michael was trying to reach her through her mobile and residence phones, she was not available until six o'clock in the morning, which was only about four hours after the incident. Clearly, it was possible for her to be at the place where the felony was committed. Besides, as earlier discussed, considering the appellant's participation as a co-conspirator, her absence from the place of commission does not negate her culpability.

5. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; SHOWN BY THE FACT THAT THE VICTIM WAS UNAWARE AND TOTALLY DEFENSELESS AGAINST THE ARMED INVADERS.— Murder is committed by any person who, not falling within the provisions of Article 246 of the Revised Penal Code (RPC), kills another, if the killing is committed with treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. Hence, for treachery to be appreciated, two conditions must be met, to wit: (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 means, method or manner of execution. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to himself. The circumstances obtaining in the instant case show that treachery attended the killing of the victim. It is undisputed that the killing occurred at around two o'clock in the morning, an hour when generally people are asleep. The

witnesses are also one in saying that upon entering Steven's room, the assailants immediately shot the former and caused the latter's death. Both the testimonial and the physical sets of evidence also show that Steven was shot from behind. Evidently, the victim was caught unaware, totally defenseless against the armed invaders.

6. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; ESTABLISHED IN CASE AT BAR.— While it is true that appellant did not directly participate in shooting Steven, nevertheless, evidence clearly shows that she was part of the conspiracy to commit the crime. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It must be proved with the same quantum of evidence as the crime itself. However, direct proof is not required, as conspiracy may be proved by circumstantial evidence. It may be established through the collective acts of the accused before, during and after the commission of a felony that all the accused aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments. In the present case, the CA correctly outlined the circumstances showing the appellant's participation, *viz.*: *First,* Evelyn [appellant herein] provided for the effective and compelling inducement for Arnold to carry into effect the killing of Steven. *Second,* Evelyn personally summoned and "recruited" Robin to come along with them for possible backup or perhaps as "additional ammunition" in case of resistance or retaliation on the part of their target. *Third,* it is apparent that the three men were not aware of Steven's location, and thus Evelyn acted as the guide who directed the group towards the residence of Steven at Makati. *And fourth,* Evelyn provided the group with the keys in order for them to enter the apartment with ease and unnoticed.

7. ID.; CIVIL LIABILITY; AWARD OF MORAL DAMAGES AFFIRMED; ADDITIONAL AWARD OF ₱25,000.00 AS EXEMPLARY DAMAGES DEEMED PROPER.— We affirm the award of civil indemnity and moral damages but we deem it proper to order the payment of an additional amount of

₱25,000.00 as exemplary damages. Civil indemnity is mandatory and granted to the heirs of the victim even without need of proof other than the commission of the crime. The amount of ₱50,000.00 awarded by the trial and appellate courts is in line with prevailing jurisprudence. As to moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The amount of ₱50,000.00 was, therefore, correctly awarded. In addition, exemplary damages should be awarded to the heirs of the victim, since the qualifying circumstance of treachery was proven by the prosecution. 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. This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Pallera Tobias & Saluib Law Office for appellant.

D E C I S I O N

NACHURA, *J.*:

This is an appeal interposed by appellant Evelyn Bohol seeking the reversal of the Court of Appeals (CA) Decision[1] dated December 28, 2006 which in turn affirmed with modification the Regional Trial Court[2] (RTC) Decision[3] dated November 25, 2004.

The facts of the case follow:

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 2-24.

[2] Branch 141, Makati City.

[3] Penned by Judge Manuel D. Victorio; CA *rollo*, pp. 30-47.

The victim, Steven Alston Davis (Steven), a 31-year old British national, was the Chief Technology Officer of JC Software, a local subsidiary of Hong Kong based corporation JADECOOL Entertainment. Together with his business associate and long-time friend Michael Thomas Dunn (Michael), a Canadian citizen, Steven resided at a two-storey apartment unit at No. 5958 Firmina Street, *Barangay* Poblacion, Makati City.[4]

Steven married appellant Evelyn Bohol in Hong Kong sometime in March 1997, when the latter was only 17 years old. Together with their two minor children, Steven and the appellant shared a house at No. 1823 Fifth Street, Villasol Subdivision in Angeles City, Pampanga. Steven spent his weekdays in the Makati apartment, and stayed with his family in Angeles City during weekends.[5]

On July 17, 2002, Steven and Michael worked until around ten o'clock in the evening at the principal office of JC Software in Makati. At about 10:45 p.m., they headed to their rented apartment. Steven proceeded to his room, did some computer work, then went to sleep. At about 11:30 p.m., Michael went to the airport to fetch his girlfriend Jennifer Castillo (Jennifer), who was then arriving from Hong Kong. Michael and Jennifer returned to the apartment at one o'clock in the morning of July 18, 2002. They went to bed a short moment thereafter.[6]

At around two o'clock in the morning, Jennifer told Michael that a person seemed to be moving and flashing a light outside their room. Suspecting that the person outside the room was Steven, and that the latter was just trying to play a practical joke on them, Michael inquired "What are you doing tonight?" Instead of Steven answering back, three men with drawn handguns suddenly entered their room. These three individuals were later positively identified during the trial to be Arnold Adoray (Arnold), Alexander Dagami (Alexander), and accused-turned-state-witness Robin Butas (Robin). Arnold, whose gun was aimed at Michael,

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[4] *Rollo,* p. 6.

[5] *Id.*

[6] *Id.* at 6-7.

asked, "*Ito ba? Ito ba*?" Alexander thereafter grabbed Jennifer by the hand and locked her inside Michael's bathroom. After taking Michael's keys, wallet, and cellular phone, the three men proceeded to Steven's room.[7] Upon seeing the then sleeping Steven, Arnold fired four consecutive shots upon the former, hitting the latter at the back. The three men then hurriedly left the house.[8] After he was sure that Arnold, Alexander and Robin were no longer inside the apartment, Michael immediately went to Steven's room. There, Michael saw the lifeless body of Steven. After checking Steven's pulse, Michael administered cardiopulmonary resuscitation (CPR) on the former's chest but he no longer made any response.[9] Thereafter, Philippine National Police (PNP) personnel arrived at the scene of the crime; then an ambulance took Steven's body to the Makati Medical Center where he was pronounced dead on arrival.[10]

Michael made numerous attempts to reach the appellant by phone immediately after the incident, but his efforts were all in vain. Finally, he was able to contact her through her mobile phone at around six o'clock in the morning; the former immediately informed the latter of the killing of her husband. When Michael met Evelyn at ten o'clock in the morning, he readily observed that appellant showed no signs of sadness or mourning despite the violent death of her husband.[11]

After the autopsy of the cadaver in the afternoon of July 18, 2002, the National Bureau of Investigation (NBI) Medico-Legal officer found that Steven sustained four gunshot wounds at the upper left portion of his back, including four bullet holes at the back of his upper left arm, just below the shoulder.[12]

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

[8] *Id.* at 11.

[9] *Id.* at 8.

[10] *Id.* at 9.

[11] *Id.*

[12] Records, Vol. III, pp. 39-40.

Arnold and Alexander were thus charged with murder on August 16, 2002.[13] Trial thereafter ensued. The information was later amended[14] charging the appellant, together with Robin, with the crime of murder, in conspiracy with Arnold and Alexander. The accusatory portion of the information reads:

> That on or about the 18th day of July, 2002, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an automatic pistol and revolver, conspiring and confederating together, and all of them mutually helping and aiding one another, with intent to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shot one STEVEN ALSTON DAVIS, on the different parts of his body, thereby inflicting upon the latter serious and mortal gunshot wound which directly caused his death.
>
> CONTRARY TO LAW.[15]

Considering that at the time the appellant was arrested, the trial of the case, in which Arnold and Alexander were eventually convicted,[16] was almost complete, a separate trial for the appellant was held. Upon arraignment, the appellant pleaded "Not guilty."[17] To ensure impartiality, the presiding judge inhibited himself, and the case of the appellant was re-raffled to Branch 141.

It appears that Robin was discharged as a state witness.[18] Robin contended that the appellant was responsible for inducing/persuading him, Arnold, and Alexander to perpetrate the killing of Steven. He further stated that the appellant and Arnold (as in fact admitted to him by the appellant) were having a love affair, as he would oftentimes see them caress and kiss each

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[13] Records, Vol. I, pp. 1-2.

[14] *Id.* at 117-118.

[15] *Id.* at 117.

[16] Embodied in a Decision dated April 27, 2004; *id.* at 343-347.

[17] *Rollo*, p. 5.

[18] *Id.* at 3.

other in the living room of their house in Angeles City. Robin also testified that, at about eleven o'clock in the evening of July 17, 2002, appellant roused him from sleep and required him to join them.[19] Robin then rode a white car together with Arnold, Alexander and the appellant, who acted as the guide in proceeding towards Steven's apartment. Upon reaching Steven's place, appellant gave Arnold the keys of the house, and forthwith ordered the group to alight from the car. Upon gaining entry, the three performed all the acts of execution. Riding the same car, Arnold, Alexander, Robin and Evelyn returned to Angeles City. Even as they were traveling, Evelyn warned them never to tell anybody about the incident. Robin, however, divulged the violent incident to his wife Gina Bohol Butas (Gina), Evelyn's sister. In essence, the material points of Robin's testimony were wholly corroborated by Gina. According to Gina, the appellant admitted that she was in love with Arnold. She added that the appellant confided to her the plan to kill Steven in order for the appellant and Arnold to freely stay together.[20]

By way of defense, appellant theorized that it was physically impossible for her to have a direct and material participation in the killing of Steven as she was absent from the scene of the crime, and she lacked the ill motive to orchestrate the murder of her husband. She also contended that she was at home with her children at the time of the commission of the felony.[21]

On November 25, 2004, the RTC rendered a Decision[22] finding the appellant guilty beyond reasonable doubt of murder, qualified by treachery, and sentenced her to suffer the penalty of *reclusion perpetua*. The court also made her liable to pay civil indemnity in the amount of ₱50,000.00.

The court found sufficient evidence to establish conspiracy to kill Steven. It likewise held that treachery was adequately

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[19] By "them" the appellant meant she, Alexander and Arnold.

[20] *Rollo*, pp. 9-12.

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

[22] CA *rollo*, pp. 30-47.

proven, thus, establishing the crime of murder. It, however, refused to recognize the aggravating circumstance of evident premeditation because of insufficiency of evidence. It is undisputed that the appellant was married to Steven; however, the trial court concluded that she could not be held liable for parricide in view of the nullity of their marriage, for having been contracted at the time when appellant was only 17 years old.[23]

This decision was affirmed by the CA in its Decision dated December 28, 2006, with an added award of ₱50,000.00 representing moral damages due the heirs of Steven.[24]

In her final attempt to seek the reversal of her conviction, appellant comes before this Court, raising the following as lone error:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HER GUILT FOR THE CRIME OF MURDER WAS NOT PROVEN BEYOND REASONABLE DOUBT.[25]

Appellant bewails the fact that the trial and the appellate courts accorded great weight to the testimony of Robin. She posits that having turned state witness, Robin was motivated to testify solely by his desire to be exculpated from liability.[26] Appellant adds that her motive to kill Steven was not established at all.[27] She further avers that her conviction should not have been based on Robin's testimony, or on the weakness of the evidence for the defense.[28] Lastly, appellant insists that in no way could she be convicted of murder for lack of sufficient evidence to prove the qualifying circumstance of treachery.[29]

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[23] *Id.* at 42-47.

[24] *Rollo*, p. 23.

[25] *Id.* at 55.

[26] *Id.* at 55-56.

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

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

[29] CA *rollo*, pp. 72-73.

After a careful review of the records and evidence presented, we find no cogent reason to reverse the decision of the RTC, as affirmed by the CA. Nevertheless, we deem it proper to discuss the issues raised by the appellant.

First, *whether Robin's testimony is credible*. As this Court has consistently said, where the culpability or innocence of an accused would hinge on the issue of the credibility of witnesses, the findings of fact of the CA affirming those of the trial court, duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court, and are not to be disturbed on appeal.[30] The only exception is when certain facts of substance and value have been overlooked which, if considered, might affect the result of the case.[31]

Moreover, as enunciated in *People v. Bocalan,*[32] the simple fact that Robin was originally charged with the appellant as a co-conspirator but was later discharged as a state witness and was no longer prosecuted for the crime charged does not render his testimony incredible or lessen its probative weight. Otherwise stated, the barefaced fact that Robin was charged as a co-conspirator in the commission of the crime before he was discharged as a state witness does not disqualify him as a witness or discredit his testimony.[33] While his testimony should be taken with caution, there is no reason why it cannot be given credence, it appearing that the same was corroborated by the testimony of his wife who happens to be appellant's sister. Besides, appellant offered no evidence to show that Robin was actuated by an ill or devious motive to testify against her.

Appellant's claim that Robin testified against her only because he was motivated by his desire to be exculpated from his liability

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[30] *Siccuan v. People*, G.R. No. 133709, April 28, 2005, 457 SCRA 458, 463-464.

[31] *People v. Bensig*, 437 Phil. 748, 756 (2002); *People v. Chavez*, 343 Phil. 758, 768 (1997).

[32] 457 Phil. 472, 482 (2003).

[33] *People v. Bocalan, supra*; see *People v. Ferrer*, 325 Phil. 269, 286 (1996).

as a co-conspirator is likewise bereft of merit. Considering his close relationship with the appellant, the latter being his sister-in-law, there was no other reason for Robin to have testified against the appellant except his desire to tell the truth. This was bolstered by the fact that appellant's own sister corroborated Robin's testimony. More importantly, Robin's testimony was corroborated by physical evidence, namely, the autopsy report that Steven sustained four gunshot wounds at the upper left portion of his back, including four bullet holes at the back of his upper left arm, just below the shoulder,[34] which was thus consistent with his testimony that upon seeing Steven who was then asleep, Arnold fired four consecutive shots upon the former, hitting him at the back.[35]

Second, *whether appellant was correctly convicted of murder.* Murder is committed by any person who, not falling within the provisions of Article 246[36] of the Revised Penal Code (RPC), kills another, if the killing is committed with treachery.[37] There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[38] Hence, for treachery to be appreciated, two conditions must be

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[34] Records, Vol. III, pp. 39-40.

[35] *Rollo*, p. 11.

[36] Art. 246. *Parricide*.— Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

[37] Article 248 of the Revised Penal Code provides:

Art. 248. *Murder*.— Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery x x x.

[38] *People v. Garin*, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 409; *People v. Agudez*, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 707.

met, to wit: (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 means, method or manner of execution.[39]

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to himself.[40]

The circumstances obtaining in the instant case show that treachery attended the killing of the victim. It is undisputed that the killing occurred at around two o'clock in the morning, an hour when generally people are asleep. The witnesses are also one in saying that upon entering Steven's room, the assailants immediately shot the former and caused the latter's death. Both the testimonial and the physical sets of evidence also show that Steven was shot from behind. Evidently, the victim was caught unaware, totally defenseless against the armed invaders.[41]

While it is true that appellant did not directly participate in shooting Steven, nevertheless, evidence clearly shows that she was part of the conspiracy to commit the crime. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[42] It must be proved with the same quantum of evidence as the crime itself. However, direct proof is not required, as

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[39] *People v. Garin*, *supra*; *People v. Agudez, supra*; see *People v. Barcenal*, G.R. No. 175925, August 17, 2007, 530 SCRA 706, 725.

[40] *Supra* note 38.

[41] The Court has held in the following cases that treachery attended the commission of the crime when the victim was attacked while he was asleep:

(1) *People v. Cajumocan*, G.R. No. 155023, May 28, 2004, 430 SCRA 311;

(2) *People v. Demate*, 465 Phil. 127 (2004).

(3) *People v. Bernal*, 437 Phil. 11 (2002).

[42] *People v. Barcenal*, *supra* note 39, at 726; *People v. Agudez, supra* note 38, at 706.

conspiracy may be proved by circumstantial evidence. It may be established through the collective acts of the accused before, during and after the commission of a felony that all the accused aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[43]

In the present case, the CA correctly outlined the circumstances showing the appellant's participation, *viz.:*

> First, Evelyn [appellant herein] provided for the effective and compelling inducement for Arnold to carry into effect the killing of Steven. Second, Evelyn personally summoned and "recruited" Robin to come along with them for possible backup or perhaps as "additional ammunition" in case of resistance or retaliation on the part of their target. Third, it is apparent that the three men were not aware of Steven's location, and thus Evelyn acted as the guide who directed the group towards the residence of Steven at Makati. And fourth, Evelyn provided the group with the keys in order for them to enter the apartment with ease and unnoticed.[44]

Indubitably, conspiracy was established.

Appellant seeks refuge in the defense of alibi which we have consistently regarded as the much abused sanctuary of felons and which is considered as an argument with a bad reputation. It is, to say the least, the weakest defense which must be taken with caution being easily fabricated.[45] Such defense cannot prevail over the positive identification of appellant as one of the conspirators in killing Steven. Though she did not participate in the actual shooting of Steven, it was sufficiently established that she traveled from Angeles City to Makati City, together with the assailants; she waited for the assailants inside the car;

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[43] *People v. Agudez, supra* note 38, at 706, citing *People v. Caballero,* 448 Phil. 514 (2003).

[44] *Rollo,* pp. 18-19.

[45] *People v. Flores,* 466 Phil. 683, 692 (2004).

and she traveled back to Angeles City, again with her co-conspirators, after the commission of the felony. Furthermore, appellant failed to establish that it was physically impossible for her to have been at the scene of the crime at the time of its commission. Angeles City is only a few kilometers away from Makati and only a few hours of travel by land. This is coupled by the fact that when Michael was trying to reach her through her mobile and residence phones, she was not available until six o'clock in the morning, which was only about four hours after the incident. Clearly, it was possible for her to be at the place where the felony was committed. Besides, as earlier discussed, considering the appellant's participation as a co-conspirator, her absence from the place of commission does not negate her culpability.

We would like to clarify at this point that although admittedly, appellant was the wife of the victim, she could not be convicted of parricide as provided in Article 246 of the RPC. Records show that appellant's relationship with the victim was not alleged in the information.[46] Hence, she can be convicted only of murder.

Under Article 248 of the RPC, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua.* The prison term imposed by the trial court and as affirmed by the CA is, therefore, correct.

Lastly, *whether the damages awarded to the heirs of Steven are proper.* We affirm the award of civil indemnity and moral damages but we deem it proper to order the payment of an additional amount of ₱25,000.00 as exemplary damages.

Civil indemnity is mandatory and granted to the heirs of the victim even without need of proof other than the commission of the crime. The amount of ₱50,000.00 awarded by the trial and appellate courts is in line with prevailing jurisprudence.[47]

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[46] See *People v. Jumawan,* 202 Phil. 294, 309 (1982).

[47] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 476; *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554, 572; *People v. Garin*, *supra* note 38, at 413.

As to moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[48] The amount of ₱50,000.00 was, therefore, correctly awarded.

In addition, exemplary damages should be awarded to the heirs of the victim, since the qualifying circumstance of treachery was proven by the prosecution.[49] 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. This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[50]

WHEREFORE, we *AFFIRM* the December 28, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00551 finding appellant Evelyn Bohol y Talaogan guilty beyond reasonable doubt of murder, with the *MODIFICATION* that the victim's heirs are also entitled to the award of exemplary damages of ₱25,000.00.

SO ORDERED.

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

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[48] *People v. Ducabo, supra,* at 477; *People v. Rodas, supra,* at 573.

[49] *People v. Ducabo, supra* note 47, at 477; *People v. Rodas, supra* note 47, at 573; *People v. Barcenal, supra* note 39, at 727.

[50] *People v. Barcenal, supra* note 39, at 727-728.

SECOND DIVISION

[G.R. No. 180926. December 10, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LOURDES VALENCIANO *y* DACUBA,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ILLEGAL RECRUITMENT; CLAIM OF ACCUSED-APPELLANT THAT SHE WAS A MERE EMPLOYEE OF HER OTHER CO-ACCUSED DOES NOT RELIEVED HER OF LIABILITY.— The claim of accused-appellant that she was a mere employee of her other co-accused does not relieve her of liability. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that the employee actively and consciously participated in illegal recruitment. As testified to by the complainants, accused-appellant was among those who met and transacted with them regarding the job placement offers. In some instances, she made the effort to go to their houses to recruit them. She even gave assurances that they would be able to find employment abroad and leave for Taiwan after the filing of their applications. Accused-appellant was clearly engaged in recruitment activities, notwithstanding her gratuitous protestation that her actions were merely done in the course of her employment as a clerk. Accused-appellant cannot claim to be merely following the dictates of her employers and use good faith as a shield against criminal liability. As held in *People v. Gutierrez:* Appellant cannot escape liability by claiming that she was not aware that before working for her employer in the recruitment agency, she should first be registered with the POEA. Illegal recruitment in large scale is *malum prohibitum*, not *malum in se*. Good faith is not a defense.

2. ID.; ID.; EVEN IF NO MONEY CHANGED HANDS, MONEY IS NOT MATERIAL TO A PROSECUTION FOR ILLEGAL RECRUITMENT, AS THE DEFINITION OF "RECRUITMENT AND PLACEMENT" IN THE LABOR

CODE INCLUDES THE PHRASE, "WHETHER FOR PROFIT OR NOT."— The claim of accused-appellant that she received no payment and that the payments were handed directly over to her co-accused fails in the face of the testimony of the complainants that accused-appellant was the one who received the money. In spite of the receipts having been issued by her co-accused, the trial court found that payments were directly made to accused-appellant, and this finding was upheld by the CA. Nothing is more entrenched than the rule that where, as here, the findings of fact of the trial court are affirmed by the CA, these are final and conclusive upon this Court. And even if it were true that no money changed hands, money is not material to a prosecution for illegal recruitment, as the definition of "recruitment and placement" in the Labor Code includes the phrase, "whether for profit or not". We held in *People v. Jamilosa* that it was "sufficient that the accused promises or offers for a fee employment to warrant conviction for illegal recruitment." Accused-appellant made representations that complainants would receive employment abroad, and this suffices for her conviction, even if her name does not appear on the receipts issued to complainants as evidence that payment was made.

3. ID.; ID.; NEITHER ACCUSED-APPELLANT NOR HER CO-ACCUSED HAD THE AUTHORITY TO RECRUIT WORKERS FOR OVERSEAS EMPLOYMENT.— Neither accused-appellant nor her co-accused had authority to recruit workers for overseas employment. The Philippine Overseas Employment Administration (POEA), through its employee, Corazon Aquino, issued on July 8, 1997 the following certification to that effect: This is to certify that per available records of this Office, MIDDLE EAST INTERNATIONAL MANPOWER RESOURCES INC., with office address at 2119 P. Burgos St., cor. Gil Puyat Ave., Pasay City represented by SAPHIA CALAMATA ASAAD is a licensed landbased agency whose license expired on October 13, 1996. Per record, said agency has not filed any application for renewal of license. Per available records, the names of RODANTE IMPERIAL a.k.a. ROMEO MARQUEZ, TERESITA IMPERIAL a.k.a. TERESITA MARQUEZ, ROMMEL MARQUEZ a.k.a. ROMMEL IMPERIAL and LOURDES VALENCIANO do not appear on the list of employees submitted by agency. This certification

is being issued for whatever legal purpose it may serve. Another certification dated July 9, 1997 stated that accused-appellant in her personal capacity was not licensed or authorized to recruit workers for overseas employment and that any recruitment activities undertaken by her are illegal. Accused-appellant could thus point to no authority allowing her to recruit complainants, as she was not an employee of Middle East International Manpower Resources, Inc. nor was she allowed to do so in her personal capacity. Furthermore, she undertook recruitment activities outside the premises of the office of a licensed recruitment agency, which can only be done with the prior approval of the POEA, and neither she nor her co-accused had permission to do so, as testified by Aquino of the POEA.

4. ID.; ID.; CONVICTION OF ACCUSED-APPELLANT FOR ILLEGAL RECRUITMENT IN LARGE SCALE UPHELD.— Accused-appellant was convicted of Illegal Recruitment in Large Scale, and there could be no other result. As held in *Jamilosa:* To prove illegal recruitment in large scale, the prosecution is burdened to prove three (3) essential elements, to wit: (1) the person charged undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) accused committed the same against three or more persons individually or as a group. . . . The RTC found accused-appellant to have undertaken recruitment activities, and this was affirmed by the CA. A POEA certification was submitted stating that accused-appellant was not authorized to recruit applicants for overseas employment, and she did not contest this certification. In the present case, there are four complainants: De Luna, De Villa, Dela Cuesta, and Candelaria. The three essential elements for illegal recruitment in large scale are present. Thus, there can be no other conclusion in this case but to uphold the conviction of accused-appellant and apply the penalty as imposed by law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision[1] dated July 24, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01390 which upheld the Decision[2] of the Regional Trial Court (RTC), Branch 116 in Pasay City in Criminal Case No. 97-9851. The RTC convicted Lourdes Valenciano of the crime of Illegal Recruitment in Large Scale.

The Facts

In May 1996, Lourdes Valenciano, claiming to be an employee of Middle East International Manpower Resources, Inc., went with one Susie Caraeg to the house of Agapito De Luna, and told him he could apply for a job in Taiwan. A week later, De Luna went to Valenciano's house, there to be told to undergo a medical examination, with the assurance that if there were a job order abroad, he would be able to leave. He was also told that the placement fee for his employment as a factory worker in Taiwan was PhP 70,000.

After passing the medical examination, De Luna paid Valenciano at the latter's residence the following amounts: PhP 20,000 on June 21, 1996; PhP 20,000 on July 12, 1996; and PhP 30,000 on August 21, 1996. The first and last payments were turned over by Valenciano to Teresita Imperial, who issued the corresponding receipts, and the second payment was turned over by Valenciano to Rodante Imperial, who also issued a receipt.

Also in May 1996, Valenciano visited the house of Allan De Villa, accompanied by Euziel N. Dela Cuesta, Eusebio T. Candelaria, and De Luna, to recruit De Villa as a factory worker in Taiwan. De Villa was also asked for PhP 70,000 as placement

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[1] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

[2] Penned by Judge Alfredo G. Gustilo.

fee. He paid Valenciano the following amounts: PhP 20,000 on May 16, 1996 at Valenciano's residence; PhP 20,000 on May 30, 1996 at the Rural Bank of Calaca, Batangas; PhP 20,000 on July 8, 1996 at Valenciano's residence; and PhP 10,000 on August 14, 1996, also at her residence. Valenciano turned over the amounts to either Teresita or Rodante. Teresita issued receipts for the May 16, July 8, and August 14, 1996 payments, while Rodante issued a receipt for the payment made on May 30, 1996.

On May 20, 1996, Valenciano, accompanied by Rodante and Puring Caraeg, went to the house of Dela Cuesta to recruit her for employment as a factory worker in Taiwan. Dela Cuesta paid Valenciano PhP 20,000 as initial payment on May 20, 1996. On May 30, 1996, she paid Valenciano another PhP 20,000. On August 12, 1996, she paid PhP 15,000, and on August 21, 1996, she paid PhP 7,000. Valenciano turned the May 20 and 30, 1996 payments over to Rodante, who issued receipts for these payments. The payments made on August 12 and 21, 1996 were turned over to Teresita, who also issued receipts for them. These payments were to cover the placement fee and other expenses for the processing of the requirements for the employment of Dela Cuesta in Taiwan.

On May 1, 1996, Valenciano, with Rodante, Teresita, and Rommel Imperial, went to Lian, Batangas to recruit workers for employment abroad. Candelaria applied for a job as a factory worker in Taiwan when Valenciano went to his residence in Lian. Valenciano asked him for an initial payment of PhP 20,000. On May 30, 1996, Candelaria paid Valenciano PhP 20,000 when she returned to Lian. He then paid PhP 20,000 on June 24, 1996 and PhP 29,000 on July 17, 1996 at Valenciano's residence in Manila. These payments were to cover the placement fee and the expenses for the processing of his passport and other papers connected with his application for employment as a factory worker in Taiwan. The payments made on May 30 and July 17, 1996 were turned over to Rodante, who issued a receipt for the said payments. The payment made on June 24, 1996 was turned over by Valenciano to Teresita.

After the payments were made, Valenciano brought the prospective workers to the office of Middle East International Manpower Resources, Inc. in Pasay City, where they were made to fill out application forms for their employment as factory workers in Taiwan. The complainants were introduced to Romeo Marquez, alias "Rodante Imperial," Teresita Marquez, alias "Teresita Imperial," and Rommel Marquez, alias "Rommel Imperial," whom Valenciano made to appear as the owners of the employment agency. She assured the prospective workers that they could leave for Taiwan within one month from the filing of their applications. During the period material, they have not yet found employment as factory workers in Taiwan.

Valenciano, Rodante, Teresita, and Rommel were charged with the offense of illegal recruitment in large scale, as defined under Article 13(b) of Presidential Decree No. (PD) 442, otherwise known as the Labor Code of the Philippines, as amended, in relation to Art. 38(a), and penalized under Art. 39(c) of the Code, as amended by PD 1920 and PD 2018. The Information reads as follows:

> That sometime in May, 1996 to August, 1996, or thereabout, in the City of Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, representing to have the capacity, authority or license to contract, enlist and deploy or transport workers for overseas employment, conspiring, confederating, and mutually helping each other, did then and there, wilfully, unlawfully and criminally recruit and promise to deploy the herein complainants, namely, Agapito R. De Luna, Allan Ilagan De Villa, Euziel N. Dela Cuesta and Eusebio T. Candelaria, as factory workers in Taiwan, in exchange for placement, processing and other fees ranging from ₱62,000.00 to ₱70,000.00 or a total of ₱271,000.00, without first obtaining the required license and/or authority from the Philippine Overseas Employment Administration (POEA).
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> CONTRARY TO LAW.[3]

Accused-appellant Valenciano pleaded not guilty and waived the pre-trial. The other three accused remained at large.

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[3] *Rollo*, p. 3.

The RTC found accused-appellant guilty, the dispositive portion of the decision reading as follows:

> WHEREFORE, accused Lourdes Valenciano y Dacuba is found guilty beyond reasonable doubt of the offense of illegal recruitment in large scale as charged in the aforequoted Information; and she is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱100,000.00.
>
> She is also ordered to indemnify complainants Agapito R. de Luna, Allan Ilagan de Villa, Euziel N. dela Cuesta and Eusebio T. Candelaria the amounts of ₱70,000.00, ₱70,000.00, ₱62,000.00 and ₱69,000.00, respectively, as reparation of the damage caused.
>
> No other civil liability may be adjudged against the accused for lack of any factual or legal basis therefor.
>
> SO ORDERED.[4]

Accused-appellant appealed to this Court, but the case was transferred to the CA through a Resolution dated September 6, 2004, following *People v. Mateo*.[5]

The CA, in CA-G.R. CR-H.C. No. 01390, affirmed the decision of the trial court finding accused-appellant guilty of the offense charged.

Hence, we have this appeal.

The Issues

Accused-appellant raises the following assignment of errors: (1) the lower court gravely erred in not acquitting accused-appellant on reasonable doubt; and (2) the lower court gravely erred in holding that a conspiracy exists between accused-appellant and her co-accused.

The Court's Ruling

The appeal is without merit.

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

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

In her defense, accused-appellant claims that she was an ordinary employee of Middle East International Manpower Resources, Inc., where her other co-accused were the owners and managers. She also denies receiving payment from the complainants; that had she promised employment in Taiwan, this promise was made in the performance of her duties as a clerk in the company. She denies too having knowledge of the criminal intent of her co-accused, adding that she might even be regarded as a victim in the present case, as she was in good faith when she made the promise.

Art. 13(b) of the Labor Code reads:

> "Recruitment and placement" refers to 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 shall be deemed engaged in recruitment and placement.

Art. 38(a) and (b) of the Labor Code reads as follows:

> (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. x x x
>
> (b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.
>
> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Art. 39(a) provides that the penalty of life imprisonment and a fine of PhP 100,000 shall be imposed if illegal recruitment constitutes economic sabotage as defined above.

The claim of accused-appellant that she was a mere employee of her other co-accused does not relieve her of liability. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that the employee actively and consciously participated in illegal recruitment.[6] As testified to by the complainants, accused-appellant was among those who met and transacted with them regarding the job placement offers. In some instances, she made the effort to go to their houses to recruit them. She even gave assurances that they would be able to find employment abroad and leave for Taiwan after the filing of their applications. Accused-appellant was clearly engaged in recruitment activities, notwithstanding her gratuitous protestation that her actions were merely done in the course of her employment as a clerk.

Accused-appellant cannot claim to be merely following the dictates of her employers and use good faith as a shield against criminal liability. As held in *People v. Gutierrez*:

> Appellant cannot escape liability by claiming that she was not aware that before working for her employer in the recruitment agency, she should first be registered with the POEA. Illegal recruitment in large scale is *malum prohibitum*, not *malum in se*. Good faith is not a defense.[7]

The claim of accused-appellant that she received no payment and that the payments were handed directly over to her co-accused fails in the face of the testimony of the complainants that accused-appellant was the one who received the money. In spite of the receipts having been issued by her co-accused, the trial court found that payments were directly made to accused-appellant, and this finding was upheld by the CA. Nothing is more entrenched than the rule that where, as here, the findings of fact of the trial court are affirmed by the CA, these are final and conclusive upon this Court.[8] And even if it were true that

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[6] *People v. Cabais*, G.R. 129070, March 16, 2001, 354 SCRA 553, 561.

[7] G.R. No. 124439, February 5, 2004, 422 SCRA 32, 43-44.

[8] *Springsun Management Systems Corporation v. Camerino*, G.R. No. 161029, January 19, 2005, 449 SCRA 65, 85.

no money changed hands, money is not material to a prosecution for illegal recruitment, as the definition of "recruitment and placement" in the Labor Code includes the phrase, "whether for profit or not." We held in *People v. Jamilosa* that it was "sufficient that the accused promises or offers for a fee employment to warrant conviction for illegal recruitment."[9] Accused-appellant made representations that complainants would receive employment abroad, and this suffices for her conviction, even if her name does not appear on the receipts issued to complainants as evidence that payment was made.

Neither accused-appellant nor her co-accused had authority to recruit workers for overseas employment. The Philippine Overseas Employment Administration (POEA), through its employee, Corazon Aquino, issued on July 8, 1997 the following certification to that effect:

> This is to certify that per available records of this Office, MIDDLE EAST INTERNATIONAL MANPOWER RESOURCES INC., with office address at 2119 P. Burgos St., cor. Gil Puyat Ave., Pasay City represented by SAPHIA CALAMATA ASAAD is a licensed landbased agency whose license expired on October 13, 1996. Per record, said agency has not filed any application for renewal of license.
>
> Per available records, the names of RODANTE IMPERIAL a.k.a. ROMEO MARQUEZ, TERESITA IMPERIAL *a.k.a.* TERESITA MARQUEZ, ROMMEL MARQUEZ a.k.a. ROMMEL IMPERIAL and LOURDES VALENCIANO do not appear on the list of employees submitted by agency.
>
> This certification is being issued for whatever legal purpose it may serve.[10]

Another certification dated July 9, 1997 stated that accused-appellant in her personal capacity was not licensed or authorized to recruit workers for overseas employment and that any recruitment activities undertaken by her are illegal.[11] Accused-

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[9] G.R. No. 169076, January 23, 2007, 512 SCRA 340, 352.

[10] *Rollo*, p. 7.

[11] *Id*.

appellant could thus point to no authority allowing her to recruit complainants, as she was not an employee of Middle East International Manpower Resources, Inc. nor was she allowed to do so in her personal capacity. Furthermore, she undertook recruitment activities outside the premises of the office of a licensed recruitment agency, which can only be done with the prior approval of the POEA, and neither she nor her co-accused had permission to do so, as testified by Aquino of the POEA.[12]

Accused-appellant was convicted of Illegal Recruitment in Large Scale, and there could be no other result. As held in *Jamilosa*:

> To prove illegal recruitment in large scale, the prosecution is burdened to prove three (3) essential elements, to wit: (1) the person charged undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) accused committed the same against three or more persons individually or as a group.[13] x x x

The RTC found accused-appellant to have undertaken recruitment activities, and this was affirmed by the CA. A POEA certification was submitted stating that accused-appellant was not authorized to recruit applicants for overseas employment, and she did not contest this certification. In the present case, there are four complainants: De Luna, De Villa, Dela Cuesta, and Candelaria. The three essential elements for illegal recruitment in large scale are present. Thus, there can be no other conclusion in this case but to uphold the conviction of accused-appellant and apply the penalty as imposed by law.

WHEREFORE, premises considered, we *AFFIRM* the appealed CA Decision dated July 24, 2007 in CA-G.R. CR-H.C. No. 01390, with no costs.

SO ORDERED.

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

[13] *Supra* note 9, at 351.

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

EN BANC

[G.R. No. 180986. December 10, 2008]

NORBERTO ALTRES, EVITA BULINGAN, EVANGELINE SASTINE, FELIPE SASA, LILIBETH SILLAR, RAMONITO JAYSON, JELO TUCALO, JUAN BUCA, JR., JUE CHRISTINE CALAMBA, ROMEO PACQUINGAN, JR., CLEO JEAN ANGARA, LOVENA OYAO, RODOLFO TRINIDAD, LEONILA SARA, SORINA BELDAD, MA. LINDA NINAL, LILIA PONCE, JOSEFINA ONGCOY, ADELYN BUCTUAN, ALMA ORBE, MYLENE SOLIVA, NAZARENE LLOREN, ELIZABETH MANSERAS, DIAMOND MOHAMAD, MARYDELL CADAVOS, ELENA DADIOS, ALVIN CASTRO, LILIBETH RAZO, NORMA CEPRIA, PINIDO BELEY, JULIUS HAGANAS, ARTHUR CABIGON, CERILA BALABA, LIEZEL SIMAN, JUSTINA YUMOL, NERLITA CALI, JANETH BICOY, HENRY LACIDA, CESARIO ADVINCULA, JR., MERLYN RAMOS, VIRGIE TABADA, BERNARDITA CANGKE, LYNIE GUMALO, ISABEL ADANZA, ERNESTO LOBATON, RENE ARIMAS, FE SALVACION ORBE, JULIE QUIJANO, JUDITHO LANIT, GILBERTO ELIMIA, MANUEL PADAYOGDOG, HENRY BESIN, ROMULO PASILANG, BARTOLOME TAPOYAO, JR., RUWENA GORRES, MARIBETH RONDEZ, FERDINAND CAORONG, TEODOMERO CORONEL, ELIZABETH SAGPANG, and JUANITA ALVIOLA, *petitioners, vs.* **CAMILO G. EMPLEO, FRANKLIN MAATA, LIVEY**

VILLAREN, RAIDES CAGA, FRANCO BADELLES, ERNESTO BALAT, GRACE SAQUILABON, MARINA JUMALON and GEORGE DACUP, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SIGNING BY ONLY 11 OUT OF THE 59 PETITIONERS CONSIDERED SUFFICIENT; THE NON-SIGNING PETITIONERS TO THE CERTIFICATION AGAINST FORUM SHOPPING ARE DROPPED AS PARTIES TO THE CASE.— The signing of the verification by only 11 out of the 59 petitioners already sufficiently assures the Court that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation; that the pleading is filed in good faith; and that the signatories are unquestionably real parties-in-interest who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition. With respect to petitioners' certification against forum shopping, the failure of the other petitioners to sign as they could no longer be contacted or are no longer interested in pursuing the case need not merit the outright dismissal of the petition without defeating the administration of justice. *The non-signing petitioners are, however, dropped as parties to the case.* In fact, even *Docena* cited by respondents sustains petitioners' position. In that case, the certification against forum shopping was signed by only one of the petitioning spouses. The Court held that the certification against forum shopping should be deemed to constitute substantial compliance with the Rules considering, among other things, that the petitioners were husband and wife, and that the subject property was their residence which was alleged in their verified petition to be conjugal.

2. ID.; ID.; NON-PRESENTATION OF ANY IDENTIFICATION BEFORE THE NOTARY PUBLIC WAS CURED BY THE SUBMISSION OF A NOTARIZED VERIFICATION AND CERTIFICATION BEARING THE DETAIL OF THEIR COMMUNITY TAX CERTIFICATES.— With respect to petitioners' non-presentation of any identification before the notary public at the time they swore to their verification and certification attached to the petition, suffice it to state that

this was cured by petitioners' compliance with the Court's Resolution of January 22, 2008 wherein they submitted a notarized verification and certification bearing the details of their community tax certificates. This, too, is substantial compliance. The Court need not belabor its discretion to authorize subsequent compliance with the Rules.

3. ID.; ID.; JURISPRUDENTIAL PRONOUNCEMENTS RESPECTING THE NON-COMPLIANCE WITH THE REQUIREMENTS ON, OR SUBMISSION OF DEFECTIVE, VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.— For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping. 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." 5) The certification against forum shopping must be signed by *all* the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification

against forum shopping substantially complies with the Rule. 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

4. ID.; ID.; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; PETITIONERS ARE RAISING A QUESTION OF LAW; WHEN IS A QUESTION CONSIDERED ONE OF FACT OR ONE OF LAW.— The Court holds that indeed petitioners are raising a question of law. The Court had repeatedly clarified the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevance of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation. When there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law. In the case at bar, the issue posed for resolution does not call for the reevaluation of the probative value of the evidence presented, but rather the determination of which of the provisions of the Local Government Code of 1991 applies to the Civil Service Memorandum Circular requiring a certificate of availability of funds relative to the approval of petitioners' appointments.

5. ID.; ID.; THE CASE HAD BEEN RENDERED MOOT AND ACADEMIC BY THE FINAL DISAPPROVAL OF PETITIONERS' APPOINTMENTS BY THE CIVIL SERVICE COMMISSION; MOOTNESS OF THE CASE SET ASIDE BY THE COURT IN ORDER TO SETTLE THE ISSUE ONCE AND FOR ALL, GIVEN THAT THE CONTESTED ACTION IS ONE CAPABLE OF REPETITION OR SUSCEPTIBLE OF RECURRENCE.— Respondents contend that the case has become moot and

academic as the appointments of petitioners had already been disapproved by the CSC. Petitioners maintain otherwise, arguing that the act of respondent Empleo in not issuing the required certification of availability of funds unduly interfered with the power of appointment of then Mayor Quijano; that the *Sangguniang Panglungsod* Resolutions relied upon by respondent Empleo constituted legislative intervention in the mayor's power to appoint; and that the prohibition against midnight appointments applies only to presidential appointments as affirmed in *De Rama v. Court of Appeals*. *The Court finds that, indeed, the case had been rendered* **moot and academic** *by the final disapproval of petitioners' appointments by the CSC. The mootness of the case notwithstanding, the Court resolved to rule on its merits in order to settle the issue once and for all, given that the contested action is one capable of repetition or susceptible of recurrence.*

6. POLITICAL LAW; LOCAL GOVERNMENT CODE; EXPEDITURES AND ACCOUNTING; IT IS NOT THE MINISTERIAL FUNCTION OF THE CITY TREASURER TO ISSUE CERTIFICATION AS TO AVAILABILITY OF FUNDS FOR PAYMENT OF WAGES AND SALARIES; THE REQUIREMENT OF CERTIFICATION OF AVAILABILITY OF FUND FROM THE CITY TREASURER UNDER SECTION 34 IS FOR THE PURPOSE OF FACILITATING THE APPROVAL OF VOUCHER ISSUED FOR THE PAYMENT OF SERVICES ALREADY RENDERED TO, AND EXPENSES INCURRED BY, THE LOCAL GOVERNMENT UNIT.— Section 344 speaks of actual disbursements of money from the local treasury in payment of *due and demandable* obligations of the local government unit. The disbursements are to be made through the issuance, certification, and approval of vouchers. "Voucher," in its ordinary meaning, is a document which shows that services have been performed or expenses incurred. When used in connection with disbursement of money, it implies the existence of an instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment. *Section 344* of the Local Government Code of 1991 thus applies only when *there is already an obligation to pay* on the part of the local government unit, precisely because vouchers are issued only when services

have been performed or expenses incurred. The requirement of certification of availability of funds from the city treasurer under Section 344 of the Local Government Code of 1991 is for the purpose of *facilitating the approval of vouchers* issued for the *payment of services already rendered* to, and expenses incurred by, the local government unit. The trial court thus erred in relying on Section 344 of the Local Government Code of 1991 in ruling that the ministerial function to issue a certification as to availability of funds for the payment of the wages and salaries of petitioners pertains to the city *treasurer*. For at the time material to the required issuance of the certification, the appointments issued to petitioners were *not yet approved* by the CSC, hence, there were yet no services performed to speak of. In other words, there was yet no due and demandable obligation of the local government to petitioners.

7. ID.; ID.; ID.; WHENEVER A CERTIFICATION AS TO AVAILABILITY OF FUNDS IS REQUIRED FOR PURPOSES OTHER THAN ACTUAL PAYMENT OF AN OBLIGATION WHICH REQUIRES DISBURSEMENT OF MONEY, SECTION 474 OF THE LOCAL GOVERNMENT CODE OF 1991 APPLIES, AND IT IS THE MINISTERIAL DUTY OF THE CITY ACCOUNTANT TO ISSUE THE CERTIFICATION.— Section 474, subparagraph (b) (4) of the Local Government Code of 1991, on the other hand, requires the city *accountant* to "certify to the availability of budgetary allotment to which expenditures and obligations *may be properly charged*". By necessary implication, it includes the duty to certify to the *availability of funds for the payment of salaries and wages of appointees to positions* in the plantilla of the local government unit, as required under Section 1 (e) (ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998, a requirement before the CSC considers the approval of the appointments. In fine, whenever a certification as to availability of funds is required for *purposes other than actual payment of an obligation which requires disbursement of money*, Section 474 (b) (4) of the Local Government Code of 1991 applies, and it is the ministerial duty of the city *accountant* to issue the certification.

APPEARANCES OF COUNSEL

Hortelano Law Office for petitioners.
City Legal Office (Iligan City) for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed via petition for review on *certiorari* are the Decision dated February 2, 2007[1] and Order dated October 22, 2007[2] of Branch[3] of the Regional Trial Court (RTC) of Iligan City, which denied petitioners' petition for mandamus praying for a writ commanding the city accountant of Iligan, Camilo G. Empleo (Empleo), or his successor in office, to issue a certification of availability of funds in connection with their appointments, issued by then Iligan City Mayor Franklin M. Quijano (Mayor Quijano), which were pending approval by the Civil Service Commission (CSC).

Sometime in July 2003, Mayor Quijano sent notices of numerous vacant career positions in the city government to the CSC. The city government and the CSC thereupon proceeded to publicly announce the existence of the vacant positions. Petitioners and other applicants submitted their applications for the different positions where they felt qualified.

Toward the end of his term or on May 27, June 1, and June 24, 2004, Mayor Quijano issued appointments to petitioners.

In the meantime, the *Sangguniang Panglungsod* issued Resolution No. 04-2423 addressed to the CSC Iligan City Field Office requesting a suspension of action on the processing of appointments to all vacant positions in the plantilla of the city government as of March 19, 2004 until the enactment of a new budget.

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[1] *Rollo,* pp. 17-24.

[2] *Ibid.* at 31-36.

[3] *Id.* at 37-38.

The *Sangguniang Panglungsod* subsequently issued Resolution No. 04-266[4] which, in view of its stated policy against "midnight appointments," directed the officers of the City Human Resource Management Office to hold in abeyance the transmission of all appointments signed or to be signed by the incumbent mayor in order to ascertain whether these had been hurriedly prepared or carefully considered and whether the matters of promotion and/or qualifications had been properly addressed. The same Resolution enjoined all officers of the said Office to put off the transmission of all appointments to the CSC, therein making it clear that non-compliance therewith would be met with administrative action.

Respondent city accountant Empleo did not thus issue a certification as to availability of funds for the payment of salaries and wages of petitioners, as required by Section 1(e)(ii), Rule V of CSC Memorandum Circular No. 40, Series of 1998 reading:

x x x x x x x x x

e. LGU Appointment. Appointment in local government units for submission to the Commission shall be **accompanied**, in addition to the common requirements, by the following:

x x x x x x x x x

ii. Certification by the Municipal/City Provincial Accountant/ Budget Officer that funds are available. (Emphasis and underscoring supplied)

And the other respondents did not sign petitioners' position description forms.

The CSC Field Office for Lanao del Norte and Iligan City disapproved the appointments issued to petitioners invariably due to lack of certification of availability of funds.

On appeal by Mayor Quijano, CSC Regional Office No. XII in Cotabato City, by Decision of July 30, 2004,[5] dismissed the appeal, it explaining that its function in approving appointments

[4] *Id.* at 39-40.

[5] *Id.* at 41-45.

is only ministerial, hence, if an appointment lacks a requirement prescribed by the civil service law, rules and regulations, it would disapprove it without delving into the reasons why the requirement was not complied with.

Petitioners thus filed with the RTC of Iligan City the above-stated petition for mandamus against respondent Empleo or his successor in office for him to issue a certification of availability of funds for the payment of the salaries and wages of petitioners, and for his co-respondents or their successors in office to sign the position description forms.

As stated early on, Branch 3 of the Iligan RTC denied petitioners' petition for *mandamus*. It held that, among other things, while it is the ministerial duty of the city accountant to certify as to the availability of budgetary allotment to which expenses and obligations may properly be charged under Section 474(b)(4) of Republic Act No. 7160,[6] otherwise known as the Local Government Code of 1991, the city accountant cannot be compelled to issue a certification as to availability of funds for the payment of salaries and wages of petitioners as this ministerial function pertains to the city treasurer. In so holding, the trial court relied on Section 344 of the Local Government Code of 1991 the pertinent portion of which provides:

> Sec. 344. *Certification and Approval of Vouchers.* — No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. x x x (Underscoring supplied)

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[6] Section 474(b)(4), Republic Act No. 7160 provides:

> "Section 474. *Qualifications, Powers and Duties.* —
>
> x x x x x x x x x
>
> (b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:
>
> x x x x x x x x x
>
> (4) certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged."

Petitioners filed a motion for reconsideration[7] in which they maintained only their prayer for a writ of mandamus for respondent Empleo or his successor in office to issue a certification of availability of funds for the payment of their salaries and wages. The trial court denied the motion by Order of October 22, 2007,[8] hence, the present petition.

By Resolution of January 22, 2008,9 this Court, without giving due course to the petition, required respondents to comment thereon within ten (10) days from notice, and at the same time required petitioners to comply, within the same period, with the relevant provisions of the 1997 Rules of Civil Procedure.

Petitioners filed a Compliance Report dated February 18, 200810 to which they attached 18 copies of (a) a verification and certification, (b) an affidavit of service, and (c) photocopies of counsel's Integrated Bar of the Philippines (IBP) official receipt for the year 2008 and his privilege tax receipt for the same year.

Respondents duly filed their Comment,[11] alleging technical flaws in petitioners' petition, to which Comment petitioners filed their Reply[12] in compliance with the Court's Resolution dated April 1, 2008.[13]

The lone issue in the present petition is whether it is Section 474(b)(4) or Section 344 of the Local Government Code of 1991 which applies to the requirement of certification of availability of funds under Section 1(e)(ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998. As earlier stated, the trial court ruled that it is Section 344. Petitioners posit, however,

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[7] *Rollo,* pp. 25-30.

[8] *Supra* note 2.

[9] *Rollo,* pp. 52-53.

[10] *Ibid.* at 54-55.

[11] *Id.* at 113-127.

[12] *Id.* at 146-157.

[13] *Id.* at 145.

that it is Section 474(b)(4) under which it is the ministerial duty of the city accountant to issue the certification, and not Section 344 which pertains to the ministerial function of the city treasurer to issue the therein stated certification.

A discussion first of the technical matters questioned by respondents is in order.

Respondents assail as defective the verification and certification against forum shopping attached to the petition as it bears the signature of only 11 out of the 59 petitioners, and no competent evidence of identity was presented by the signing petitioners. They thus move for the dismissal of the petition, citing Section 5, Rule 7[14] *vis a vis* Section 5, Rule 45[15] of the 1997 Rules of

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[14] Section 5, Rule 7 of the Rules of Court provides:

SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously field 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.

[15] Section 5, Rule 45 of the Rules of Court provides:

SEC. 5. *Dismissal or denial of petition.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the

Civil Procedure and *Docena v. Lapesura*[16] which held that the certification against forum shopping should be signed by all the petitioners or plaintiffs in a case and that the signing by only one of them is insufficient as the attestation requires personal knowledge by the party executing the same.[17]

Petitioners, on the other hand, argue that they have a justifiable cause for their inability to obtain the signatures of the other petitioners as they could no longer be contacted or are no longer interested in pursuing the case.[18] Petitioners plead substantial compliance, citing *Huntington Steel Products, Inc., et al. v. NLRC*[19] which held, among other things, that while the rule is mandatory in nature, substantial compliance under justifiable circumstances is enough.

Petitioners' position is more in accord with recent decisions of this Court.

In *Iglesia ni Cristo v. Ponferrada*,[20] the Court held:

The substantial compliance rule has been applied by this Court in a number of cases: *Cavile v. Heirs of Cavile*, where the Court sustained the validity of the certification signed by only one of petitioners because he is a relative of the other petitioners and co-owner of the properties in dispute; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, where the Court allowed a certification signed by only two petitioners because the case involved a family home in which all the petitioners shared a common interest; *Gudoy v. Guadalquiver*, where the Court considered as valid the

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petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

[16] 407 Phil. 1007 (2001).

[17] *Ibid.* at 1017.

[18] *Rollo,* p. 151.

[19] G.R. No. 158311, November 17, 2004, 442 SCRA 551.

[20] G.R. No. 168943, October 27, 2006, 505 SCRA 828.

certification signed by only four of the nine petitioners because all petitioners filed as co-owners pro indiviso a complaint against respondents for quieting of title and damages, as such, they all have joint interest in the undivided whole; and *DAR v. Alonzo-Legasto*, where the Court sustained the certification signed by only one of the spouses as they were sued jointly involving a property in which they had a common interest.[21] (Italics in the original, underscoring supplied)

Very recently, in *Tan, et al. v. Ballena, et al.*,[22] the verification and certification against forum shopping attached to the original petition for *certiorari* filed with the Court of Appeals was signed by only two out of over 100 petitioners and the same was filed one day beyond the period allowed by the Rules. The appellate court initially resolved to dismiss the original petition precisely for these reasons, but on the therein petitioners' motion for reconsideration, the appellate court ordered the filing of an amended petition in order to include all the original complainants numbering about 240. An amended petition was then filed in compliance with the said order, but only 180 of the 240 original complainants signed the verification and certification against forum shopping. The Court of Appeals granted the motion for reconsideration and resolved to reinstate the petition.

In sustaining the Court of Appeals in *Tan*, the Court held that it is a far better and more prudent course of action 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.

The Court further discoursed in *Tan*:

Under justifiable circumstances, we have already allowed the relaxation of the requirements of verification and certification so that the ends of justice may be better served. Verification is simply intended to secure an assurance that the allegations in the pleading

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[21] *Ibid.* at 841-842 (citations omitted).

[22] G.R. No. 168111, July 4, 2008.

are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith; while the purpose of the aforesaid certification is to prohibit and penalize the evils of forum shopping.

In *Torres v. Specialized Packaging Development Corporation*, we ruled that the verification requirement had been substantially complied with despite the fact that only two (2) out of the twenty-five (25) petitioners have signed the petition for review and the verification. In that case, we held that the two signatories were unquestionably real parties-in-interest, who undoubtedly had sufficient knowledge and belief to swear to the truth of the allegations in the Petition.

In *Ateneo de Naga University v. Manalo*, we also ruled that there was substantial compliance with the requirement of verification when only one of the petitioners, the President of the University, signed for and on behalf of the institution and its officers.

Similarly, in *Bases Conversion and Development Authority v. Uy*, we allowed the signature of only one of the principal parties in the case despite the absence of a Board Resolution which conferred upon him the authority to represent the petitioner BCDA.

In the present case, the circumstances squarely involve a verification that was not signed by all the petitioners therein. Thus, we see no reason why we should not uphold the ruling of the Court of Appeals in reinstating the petition despite the said formal defect.

On the requirement of a certification of non-forum shopping, the well-settled rule is that all the petitioners must sign the certification of non-forum shopping. The reason for this is that the persons who have signed the certification cannot be presumed to have the personal knowledge of the other non-signing petitioners with respect to the filing or non-filing of any action or claim the same as or similar to the current petition. The rule, however, admits of an exception and that is when the petitioners show reasonable cause for failure to personally sign the certification. The petitioners must be able to convince the court that the outright dismissal of the petition would defeat the administration of justice.

In the case at bar, counsel for the respondents disclosed that most of the respondents who were the original complainants have since sought employment in the neighboring towns of Bulacan, Pampanga and Angeles City. Only the one hundred eighty (180) signatories

were then available to sign the amended Petition for Certiorari and the accompanying verification and certification of non-forum shopping.[23]

In the present case, the signing of the verification by only 11 out of the 59 petitioners already sufficiently assures the Court that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation; that the pleading is filed in good faith; and that the signatories are unquestionably real parties-in-interest who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition.

With respect to petitioners' certification against forum shopping, the failure of the other petitioners to sign as they could no longer be contacted or are no longer interested in pursuing the case need not merit the outright dismissal of the petition without defeating the administration of justice. **The non-signing petitioners are, however, dropped as parties to the case**.

In fact, even *Docena*[24] cited by respondents sustains petitioners' position. In that case, the certification against forum shopping was signed by only one of the petitioning spouses. The Court held that the certification against forum shopping should be deemed to constitute substantial compliance with the Rules considering, among other things, that the petitioners were husband and wife, and that the subject property was their residence which was alleged in their verified petition to be conjugal.[25]

With respect to petitioners' non-presentation of any identification before the notary public at the time they swore to their verification and certification attached to the petition, suffice it to state that this was cured by petitioners' compliance[26] with

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[23] *Ibid.*, citations omitted.

[24] *Supra* note 16.

[25] *Ibid.* at 1017-1021.

[26] *Supra* note 10.

the Court's Resolution of January 22, 2008[27] wherein they submitted a notarized verification and certification bearing the details of their community tax certificates. This, too, is substantial compliance. The Court need not belabor its discretion to authorize subsequent compliance with the Rules.

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.[28]

3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[29]

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial

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[27] *Supra* note 9.

[28] *Sari-Sari Group of Companies, Inc. v. Piglas-Kamao*, G.R. No. 164624, August 11, 2008.

[29] *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*, G.R. No. 164479, February 13, 2008, 545 SCRA 253.

compliance" or presence of "special circumstances or compelling reasons."[30]

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case;[31] otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.[32]

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel.[33] If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney[34] designating his counsel of record to sign on his behalf.

And now, on respondents' argument that petitioners raise questions of fact which are not proper in a petition for review on certiorari as the same must raise only questions of law. They entertain doubt on whether petitioners seek the payment of their salaries, and assert that the question of whether the city accountant can be compelled to issue a certification of availability of funds under the circumstances herein obtaining is a factual issue.[35]

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[30] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, 550 SCRA 180.

[31] *Juaban v. Espina*, G.R. No. 170049, March 14, 2008, 548 SCRA 588.

[32] *Pacquing v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, January 31, 2008, 543 SCRA 344.

[33] *Marcopper Mining Corporation v. Solidbank Corporation*, G.R. No. 134049, June 17, 2004, 432 SCRA 360.

[34] *Vide Fuentebella v. Castro*, G.R. No. 150865, June 30, 2006, 494 SCRA 183; *Eslaban, Jr. v. Vda. de Onorio*, G.R. No. 146062, June 28, 2001, 360 SCRA 230.

[35] *Rollo*, p. 121.

The Court holds that indeed petitioners are raising a question of law.

The Court had repeatedly clarified the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[36] A question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevance of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[37] When there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law.[38]

In the case at bar, the issue posed for resolution does not call for the reevaluation of the probative value of the evidence presented, but rather the determination of which of the provisions of the Local Government Code of 1991 applies to the Civil Service Memorandum Circular requiring a certificate of availability of funds relative to the approval of petitioners' appointments.

AT ALL EVENTS, respondents contend that the case has become moot and academic as the appointments of petitioners had already been disapproved by the CSC. Petitioners maintain otherwise, arguing that the act of respondent Empleo in not issuing the required certification of availability of funds unduly interfered with the power of appointment of then Mayor Quijano;

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[36] *Mendoza v. Salinas,* G.R. No. 152827, February 6, 2007, 514 SCRA 414, 419; *Vide* also *Philippine National Construction Corporation v. Court of Appeals,* G.R. No. 159417, January 25, 2007, 512 SCRA 684.

[37] *Ibid.*

[38] *National Power Corporation v. Purefoods Corporation, et al.,* G.R. No. 160725, September 12, 2008, citing *Gomez v. Sta. Ines*, G.R. No. 132537, October 14, 2005, 473 SCRA 25, 37.

that the *Sangguniang Panglungsod* Resolutions relied upon by respondent Empleo constituted legislative intervention in the mayor's power to appoint; and that the prohibition against midnight appointments applies only to presidential appointments as affirmed in *De Rama v. Court of Appeals.*[39]

The Court finds that, indeed, the case had been rendered moot and academic by the final disapproval of petitioners' appointments by the CSC.

The mootness of the case notwithstanding, the Court resolved to rule on its merits in order to settle the issue once and for all, given that the contested action is one capable of repetition[40] **or susceptible of recurrence.**

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[39] 405 Phil. 531, 551 (2001).

[40] In *David v. Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, seven petitions for *certiorari* and prohibition were filed assailing the constitutionality of the declaration of a state of national emergency by President Gloria Macapagal-Arroyo. While the declaration of a state of national emergency was already lifted during the pendency of the suits, this Court still resolved the merits of the petitions, considering that the issues involved a grave violation of the Constitution and affected the public interest. The Court also affirmed its duty to formulate guiding and controlling constitutional precepts, doctrines or rules, and recognized that the contested actions were capable of repetition.

In *Public Interest Center, Inc. v. Elma*, G.R. No. 138965, June 30, 2006, 494 SCRA 53, the petition sought to declare as null and void the concurrent appointments of Magdangal B. Elma as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) for being contrary to Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution. While Elma ceased to hold the two offices during the pendency of the case, the Court still ruled on the merits thereof, considering that the question of whether the PCGG Chairman could concurrently hold the position of CPLC was one capable of repetition.

In *Manalo v. Calderon*, G.R. No. 178920, October 15, 2007, 536 SCRA 290, a petition for habeas corpus was filed by the police officers implicated in the burning of an elementary school in Batangas at the height of the May 2007 elections. The Court decided the case on the merits notwithstanding the recall by the Philippine National Police of the restrictive custody orders against petitioners therein. Citing *David v. Arroyo*, the Court held: "Every bad, unusual incident where police officers figure in generates public interest and people watch what will be done or not done to them. Lack of disciplinary

The pertinent portions of Sections 474(b)(4) and 344 of the Local Government Code of 1991 provide:

Section 474. *Qualifications, Powers and Duties. —*

x x x x x x x x x

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x x x x x x

(4) certify to the availability of budgetary allotment to which expenditures and obligations **may be properly charged**. (Emphasis and underscoring supplied)

x x x x x x x x x

Sec. 344. *Certification and Approval of Vouchers. —* No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant **has obligated said appropriation**, and the local treasurer certifies to the availability of funds for the purpose. x x x (Emphasis and underscoring supplied)

Petitioners propound the following distinctions between Sections 474(b)(4) and 344 of the Local Government Code of 1991:

(1) Section 474(b)(4) speaks of certification of availability of budgetary allotment, while Section 344 speaks of certification of availability of funds for disbursement;

(2) Under Section 474(b)(4), before a certification is issued, there must be an appropriation, while under Section 344, before a certification is issued, two requisites must concur: (a) there must be an appropriation legally made for the purpose, and (b) the local accountant has obligated said appropriation;

(3) Under Section 474(b)(4), there is no actual payment involved because the certification is for the purpose of obligating a portion of the appropriation; while under Section 344, the certification is for the purpose of payment after the local accountant had obligated a portion of the appropriation;

(4) Under Section 474(b)(4), the certification is issued if there is an appropriation, let us say, for the salaries of appointees; while

under Section 344, the certification is issued if there is an appropriation and the same is obligated, let us say, for the payment of salaries of employees.[41]

Respondents do not squarely address the issue in their Comment.

Section 344 speaks of actual disbursements of money from the local treasury in payment of *due and demandable* obligations of the local government unit. The disbursements are to be made through the issuance, certification, and approval of vouchers. The full text of Section 344 provides:

> Sec. 344. *Certification and Approval of Vouchers. — No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved.* Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.
>
> In cases of special or trust funds, disbursements shall be approved by the administrator of the fund.
>
> In case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor. (Italics and underscoring supplied)

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steps taken against them erodes public confidence in the police institution. As petitioners themselves assert, the restrictive custody of policemen under investigation is an existing practice, hence, the issue is bound to crop up every now and then. The matter is capable of repetition or susceptible of recurrence. It better be resolved now for the education and guidance of all concerned."

[41] *Rollo,* p. 148.

"Voucher," in its ordinary meaning, is a document which shows that services have been performed or expenses incurred.[42] When used in connection with disbursement of money, it implies the existence of an instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment.[43]

Section 344 of the Local Government Code of 1991 thus applies only when there is already an obligation to pay on the part of the local government unit, precisely because vouchers are issued only when services have been performed or expenses incurred.

The requirement of certification of availability of funds from the city treasurer under Section 344 of the Local Government Code of 1991 is for the purpose of facilitating the approval of vouchers issued for the payment of services already rendered to, and expenses incurred by, the local government unit.

The trial court thus erred in relying on Section 344 of the Local Government Code of 1991 in ruling that the ministerial function to issue a certification as to availability of funds for the payment of the wages and salaries of petitioners pertains to the city treasurer. For at the time material to the required issuance of the certification, the appointments issued to petitioners were not yet approved by the CSC, hence, there were yet no services performed to speak of. In other words, there was yet no due and demandable obligation of the local government to petitioners.

Section 474, subparagraph (b)(4) of the Local Government Code of 1991, on the other hand, requires the city accountant to "certify to the availability of budgetary allotment to which

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[42] *Atienza v. Villarosa,* G.R. No. 161081, May 10, 2005, 458 SCRA 385, 403.

[43] *Ibid.* at 404, citing *First National Bank of Chicago v. City of Elgin,* 136 III. App. 453.

expenditures and obligations may be properly charged."[44] By necessary implication, it includes the duty to certify to the availability of funds for the payment of salaries and wages of appointees to positions in the plantilla of the local government unit, as required under Section 1(e)(ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998, a requirement before the CSC considers the approval of the appointments.

In fine, whenever a certification as to availability of funds is required for purposes *other than* actual payment of an obligation which requires disbursement of money, Section 474(b)(4) of the Local Government Code of 1991 applies, and it is the ministerial duty of the city accountant to issue the certification.

WHEREFORE, the Court declares that it is Section 474(b)(4), not Section 344, of the Local Government Code of 1991, which applies to the requirement of certification of availability of funds under Section 1(e)(ii), Rule V of Civil Service Commission Memorandum Circular Number 40, Series of 1998.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Reyes, JJ.*, concur.

Leonardo-de Castro, J., on official leave.

Brion, J., on leave.

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[44] *Supra* note 6.

EN BANC

[G.R. No. 156040. December 11, 2008]

DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC., *petitioner, vs.* **CITY GOVERNMENT OF BATANGAS represented by HON. ANGELITO DONDON A. DIMACUHA, Batangas City Mayor, MR. BENJAMIN S. PARGAS, Batangas City Treasurer, and ATTY. TEODULFO A. DEQUITO, Batangas City Legal Officer,** *respondents.*

SYLLABUS

1. TAXATION; REALTY TAX; SECTION 5 OF RA 7678 IMPOSES TAXES AND DOES NOT EXEMPT PETITIONER COMPANY FROM REALTY TAX.— The issue in this case involves the interpretation of the phrase "*exclusive of this franchise*" in the first sentence of Section 5 of RA 7678. The first sentence of Section 5 of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905. It is also the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company, Smart Information Technologies, Inc., and Globe Telecom. Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase "exclusive of this franchise," until petitioner filed the present case on 3 July 1999. The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to pay the following taxes: (1) "the same taxes on its real estate, buildings, *and personal property exclusive of this franchise* as other persons or corporations are now or hereafter may be required by law to pay"; (2) "franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise"; and (3) "income taxes payable under Title II of the National Internal Revenue Code."

2. ID.; ID.; A PLAIN READING SHOWS THAT THE PHRASE "EXCLUSIVE OF THIS FRANCHISE" UNDER SECTION 5 OF RA 7678 IS MEANT TO EXCLUDE THE LEGISLATIVE

FRANCHISE FROM THE PROPERTIES SUBJECT TO TAXES UNDER THE FIRST SENTENCE; PETITIONER'S FRANCHISE WHICH IS A PERSONAL PROPERTY IS NOT SUBJECT TO TAXES IMPOSED ON PROPERTIES UNDER THE FIRST SENTENCE OF SECTION 5.— The crux of the controversy lies in the interpretation of the phrase "exclusive of this franchise" in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term "personal property" shall not include petitioner's franchise, which is an intangible personal property. We rule that the phrase "exclusive of this franchise" simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and *the list excludes the franchise*. Thus, the first sentence provides: The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property *exclusive of this franchise* as other persons or corporations are now or hereafter may be required by law to pay. A plain reading shows that the phrase "exclusive of this franchise" is meant to *exclude* the legislative franchise from the properties subject to taxes under the first sentence. In effect, petitioner's franchise, which is a personal property, is not subject to the taxes imposed on properties under the first sentence of Section 5.

3. ID.; ID.; THE FIRST SENTENCE OF SECTION 5 IMPOSES ON THE FRANCHISEE THE "SAME TAXES" THAT NON-FRANCHISEES ARE SUBJECT TO WITH RESPECT TO REAL AND PERSONAL PROPERTIES; THE CLEAR INTENT IS TO PUT THE FRANCHISEES AND NON-FRANCHISEES IN PARTY IN THE TAXATION OF THEIR REAL AND PERSONAL PROPERTIES.— Petitioner's gross receipts from its franchise are subject to the "franchise tax" under the second sentence of Section 5. Thus, the second sentence provides: In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a *franchise tax* as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; . . . In short, petitioner's

franchise is excluded from the properties taxable under the first sentence of Section 5 but the gross receipts from its franchise are expressly taxable under the second sentence of the same Section. The first sentence of Section 5 imposes on the franchisee the "*same taxes*" that non-franchisees are subject to with respect to real and personal properties. The clear intent is to put the franchisees and non-franchisees *in parity* in the taxation of their real and personal properties. Since non-franchisees have obviously no franchises, the franchise must be excluded from the list of properties subject to tax to maintain the parity between the franchisees and non-franchisees. However, the franchisee is taxable separately from its franchise. Thus, the second sentence of Section 5 imposes the "franchise tax" on gross receipts, which under Republic Act No. 7716 has been replaced by the 10% Valued Added Tax effective 1 January 1996.

4. ID.; ID.; THE FIRST SENTENCE DOES NOT REFER ONLY TO TAXES ON REAL PROPERTIES, BUT ALSO TO TAXES ON PERSONAL PROPERTIES.— Section 5 can be divided into three parts. First is the first sentence which imposes taxes on real and personal properties, excluding one property, that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. Second is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And third is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees. Petitioner claims that the first sentence refers only to real properties, and that the phrase "exclusive of this franchise" exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on "real estate" and on "personal property." Clearly, the first sentence does not refer only to taxes on real properties, but also to taxes on personal properties. The trial court correctly observed that petitioner pays taxes on its motor vehicles, which are personal properties, that are used in its telecommunications business. There is also the documentary stamp tax on transactions involving real and personal properties, which petitioner and other taxpayers are liable for.

5. ID.; ID.; THERE IS NO LANGUAGE IN THE FIRST SENTENCE OF SECTION 5 EXPRESSLY OR EVEN IMPLIEDLY EXEMPTING PETITIONER FROM REALTY TAX.— A franchise granted by Congress to operate a private radio station for the franchisee's communications in deep-sea fishing shows that the first sentence of Section 5 of RA 7678 does not refer to real properties alone. Section 6 of Republic Act No. 3218 (RA 3218), entitled *An Act Granting Batas Riego de Dios a Franchise to Construct, Maintain and Operate Private Radio Stations for Radio Communications in its Deep-Sea Fishing Industry*, provides: SEC. 6. The grantee shall be liable (1) to pay the same taxes on its real estate, *building, fishing boats and personal property, exclusive of this franchise* as other persons or corporations are now, or hereafter may be required by law to pay, and shall further be liable (2) to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise. The inclusion of "*fishing boats*", personal properties that can never be attached to a land or building so as to make them real properties, demonstrates that Section 6 of RA 3218, like the first sentence of Section 5 of RA 7678, not only applies to real properties but also to personal properties.

6. ID.; ID.; THE HISTORICAL USAGE OF THE PHRASE "EXCLUSIVE OF THIS FRANCHISE" IN FRANCHISE LAWS ENACTED BY CONGRESS INDUBITABLY SHOWS THAT THE PHRASE IS NOT A GRANT OF TAX EXEMPTION, BUT AN EXCLUSION OF ONE TYPE OF PERSONAL PROPERTY SUBJECT TO TAXES, AND THE EXCLUDED PERSONAL PROPERTY IS THE FRANCHISE.— There is no language in the first sentence of Section 5 expressly or even impliedly exempting petitioner from the *realty tax*. The phrases "exemption from real estate tax", "free from real estate tax" or "not subject to real estate tax" do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both real and personal properties, excluding only the intangible personal property that is the franchise. A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first

sentence categorically states that the franchisee is subject to the "*same taxes* currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations", taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the "*same taxes*" to realty tax only but even to "those taxes" that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

7. ID.; ID.; THE INTENT OF CONGRESS IS TO MAKE LEGISLATIVE FRANCHISES LIABLE TO TAX.— In *PLDT v. City of Davao*, it was observed that after the imposition of VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax. More importantly, the uniform tax provision in these new franchises expressly states that the franchisee shall pay not only all taxes except specific tax, under the National Internal Revenue Code, but also all taxes under "*other applicable laws*", one of which is the Local Government Code which imposes the realty tax. In fact, Section 12 of Republic Act No. 9180 (RA 9180), the legislative franchise of Digitel Mobile, a 100%-owned subsidiary of petitioner, states that the franchisee, its successors or assigns shall be subject to the payment of "*all taxes*, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, *and other applicable laws*". Thus, Digitel Mobile is subject to tax on its real estate and personal properties, whether or not used in its telecommunications business. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, the Court ruled that "the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority — he who claims an exemption must be able to justify his claim by the clearest grant of statute". A person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.

8. ID.; ID.; PETITIONER'S CLAIM OF TAX EXEMPTION BASED ON THE BUREAU OF LOCAL GOVERNMENT

FINANCE'S OPINION (BLGF) DOES NOT HOLD WATER.— On 25 October 2004, the BLGF issued Memorandum Circular No. 15-2004. This circular reversed the BLGF's Letter-Opinion dated 8 April 1997 recognizing realty tax exemption under the phrase "exclusive of this franchise". This later circular states that the real properties owned by Globe and Smart Telecommunications and all other telecommunications companies similarly situated are subject to the realty tax. The BLGF has reversed its opinion on the realty tax exemption of telecommunications companies. Hence, petitioner's claim of tax exemption based on BLGF's opinion does not hold water. Besides, the BLGF has no authority to rule on claims for exemption from the realty tax.

APPEARANCES OF COUNSEL

Christopher B. Arpon for petitioner.
City Legal Office (Batangas) for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Regional Trial Court's Order[2] dated 2 May 2002 in Civil Case No. 5343 as well as the 19 November 2002 Order denying the Motion for Reconsideration. In the assailed orders, Branch 8 of the Regional Trial Court (RTC) of Batangas City (RTC-Branch 8) reversed the 28 March 2001 Order[3] issued by Branch 3 of RTC-Batangas City (RTC-Branch 3). RTC-Branch 8 declared that under its legislative franchise, Digital Telecommunications Philippines, Inc. (petitioner) is not exempt from paying real property tax assessed by the Batangas City Government (respondent).

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

[2] Penned by Judge Liberato C. Cortes.

[3] Penned by Presiding Judge Romeo F. Barza.

The Facts

On 17 February 1994, Republic Act No. 7678 (RA 7678)[4] granted petitioner a 25-year franchise to install, operate and maintain telecommunications systems throughout the Philippines. Section 5 of RA 7678 reads:

> Sec. 5. *Tax Provisions*. — **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay**. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
>
> The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

Sometime in 1997, respondent issued a building permit for the installation of petitioner's telecommunications facilities in Batangas City. After the installation of the facilities, petitioner applied with the Mayor's office of Batangas City for a permit to operate. Because of a discrepancy in the actual investment costs used in computing the prescribed fees for the clearances and permits, petitioner was not able to secure a Mayor's Permit for the year 1998. Petitioner was also advised to settle its unpaid realty taxes. However, petitioner claimed exemption from the payment of realty tax, citing the first sentence

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[4] An Act Granting the Digital Telecommunications Philippines, Incorporated, a Franchise to Install, Operate and Maintain Telecommunications Systems Throughout the Philippines and for Other Purposes.

of Section 5 of RA 7678, the Letter-Opinion of the Bureau of Local Government Finance (BLGF) dated 8 April 1997,[5]

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[5] *Rollo,* pp. 41-44.

April 8, 1997

Mr. William S. Pamintuan
Senior Vice President
Digital Telecommunications Phils., Inc. (DIGITEL)
110 E. Rodriguez Jr. Avenue
Bagumbayan, Quezon City

Sir:

This refers to your letter dated January 28, 1997, requesting opinion concerning the exemption from real property taxes of DIGITEL pursuant to the provisions of its franchise (R.A. No. 7678), which was approved on February 17, 1994.

That company advanced the contention that Digitel "is not liable to pay the aforementioned tax" on its "real estate, buildings and personal property... inclusive of its franchise," in view of the provisions of Section 5 of Republic Act No. 7678 (Digitel's legislative franchise) which, among others, provides that "[T]he grantee (Digitel) shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise, x x x."

Moreover, Digitel's position is based on the *ipso facto* provision of Section 12 of their abovementioned franchise, which reads:

> SEC. 12. *Non-exclusivity of Franchise; Interpretation of Franchise.* — The franchise granted under this Act is not exclusive and shall not prevent the grant of similar franchise to other qualified persons or entities: x x x Provided, finally, that if any subsequent franchise for telecommunications services is awarded or granted by the Congress of the Philippines with terms, privileges and conditions more favorable and beneficial than those contained in this Act, then the same privileges or advantages shall, ipso facto, accrue to the herein grantee and shall be deemed part of this Act.

It appears that the abovementioned request was prompted by the following:

1. The letter dated March 12, 1996 of the Executive Secretary, Office of the President, Malacañang, Manila, which ruled as follows:

> As clearly spelled out in the above *ipso facto* provision, it is the intent of the legislature to provide 'equality of treatment in the telecommunications industy.' Equally clear is the fact that the tax exemption being enjoyed by telecommunications companies similarly situated with Digitel or those whose franchises provide similar benefits constitutes an 'advantage, favor, privilege, exemption, or immunity' granted under an existing franchise.

> Hence, Section 6, R.A. No. 7293 granting a similar franchise to Pilipino Telephone Corporation (PILTEL) *ipso facto* became part of Digitel's franchise pursuant to Section 23 of R.A. No. 7925. Digitel, therefore, became entitled to the tax exemptions provided for under Section 6, R.A. No. 7293 immediately upon effectivity of R.A. No. 7925.

2. The 1st Indorsement dated February 14, 1995 of the Department of Finance (DOF), concerning the request of the Philippine Telegraph and Telephone Corporation (PT&T) for reconsideration of the DOF's ruling embodied under a 1st Indorsement dated May 27, 1994 which held, in view of the withdrawal of exemption provision of Section 234 of R.A. No. 7160, that: "the real properties of PT&T, although directly used in the operation of its franchise, shall be liable to the payment of real property taxes beginning January 1, 1992, the effectivity of R.A. No. 7160."

The said February 14, 1995 ruling, which is relatively similar to that of the abovecited ruling of the Office of the President, held, thus:

> In view thereof, such pertinent portion of the Tax Provisions of the franchises of SMART, Bell Telecommunication Philippines, Inc., and Digital Telecommunications Philippines, Inc., stating that "(T)he grantee shall be liable to pay the same taxes on real estate, buildings and personal property, exclusive of this franchise," is again deemed a part of PT&T's franchise when R.A. No. 7294 (SMART's franchise) took effect on April 15, 1992.
>
> The stand of this Department under its 1st Indorsement dated May 27, 1994, 'that real properties of PT&T, although directly used in the operations of its franchise, shall be liable to the payment of real property taxes beginning January 1, 1992,' is, therefore, hereby maintained. However, such real properties of the said company (PT&T) which are directly used in the operation of its franchise, should again, in view of the foregoing considerations, be assessed as exempt from payment of real property taxes commencing January 1, 1993, the year after the franchise of SMART took effect, in line with Article III (B) (2) of the Manual on Real Property Tax Administration in the Philippines and Section 221 of R.A. No. 7160, x x x.
>
> Moreover, it is emphasized that all other real properties of PT&T not used in connection with the operations of its franchise shall remain subject to the payment of real property taxes.

It is worthwhile to note that under the aforecited 1st Indorsement of the Department of Finance, Digitel's real property tax exemption was already recognized in granting PT&T's request for real property tax exemption.

and the letter of the Office of the President dated 12 March 1996.[6]

Moreover, attention is likewise invited to the letter dated July 24, 1996, of this Bureau, also treating on a similar subject matter, to wit:

> Like the abovementioned telecommunications (PT&T, SMART, BELL and DIGITAL), ISLACOM was granted, under Section 1 of R.A. No. 7372, the 'right, privilege and authority to construct, operate and maintain all types of mobile communications, including cellular, personal communication network, paging and trunk radio services (such as but not limited to the transmission and reception of voice, data facsimile, audio and video and all other improvements and innovations pertaining to or as may be applicable to mobile telecommunication technology) as well as multi-channel microwave fiber optic and satellite distribution x x x.
>
> The exemption provisions under the legislative franchise of PT&T, SMART, BELL and DIGITAL is similarly found under Section 14 of ISLACOM's franchise (R.A. 7372), which provides as follows:
>
> 'x x x x x x x x x.'
>
> Obviously, the same privilege (exemption from payment of real property taxes on properties used in the operation of franchise) should be enjoyed by ISLACOM, in the same way that exemption of the abovecited telecommunications companies (PT&T, SMART, BELL and DIGITAL) were, in effect, considered by the Department of Finance (DOF).

In view of all the foregoing, this Bureau finds merit in the abovementioned contention and claim of that company for real property tax exemption. Hence, the real properties of DIGITEL, which are used in the operation of its franchise, are hereby similarly found to be exempt from the payment of real property taxes, beginning January 1, 1993.

However, all other real properties of that company not used in connection with the operations of its franchise shall remain taxable.

Very truly yours,

LORINDA M. CARLOS
Executive Director

[6] *Id.* at 59-62.

12 March 1996

Mr. John Gokongwei, Jr.
Chairman
Digital Telecommunications Philippines, Inc.
c/o JG Summit Holdings, Inc.
29th Floor, Galleria Corporate Center
EDSA corner Ortigas Avenue
Quezon City

In 1999, respondent refused to issue a Mayor's Permit to petitioner without payment of its realty taxes.

On 22 June 1999, petitioner paid ₱68,890.39 under protest as fees for the permit to operate, but respondent refused to

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Sir:

This refers to your request for "a ruling addressed to the Bureau of Internal Revenue and the Department of Finance for the tax and duty-free importations of Digitel," the same privilege which you understood as being accorded to other telecommunications companies with the same franchise.

x x x x x x x x x

Hence, Section 6, R.A. No. 7293 granting a similar franchise to Pilipino Telephone Corporation (PILTEL) *ipso facto* became part of Digitel's franchise pursuant to Section 23 of R.A. No. 7925. Digitel, therefore, became entitled to the tax exemptions provided for under Section 6, R.A. No. 7293 immediately upon effectivity of R.A. No. 7925.

Corollarily, as ruled by the BIR in its letter-opinion dated 25 January 1995 regarding PILTEL's tax exemption, Digitel, too, shall be subject only to the following taxes, to wit:

1. Taxes on its real estate, buildings and personal property not used in connection with the conduct of its business under its franchise, as other persons or corporations are now or hereafter may be required to pay;

2. 35% corporate income tax as provided for under Section 24(a) of the Tax Code, as amended;

3. 20% final withholding tax (FWT) on interest income derived from Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes, trust funds and similar arrangements, and royalties derived from sources within the Philippines (Section 2 [e] [1], NIRC);

4. Creditable expanded withholding tax (EWT) on sales, exchanges or transfers of real properties (whether classified as ordinary or capital asset) by Digitel consummated on or after January 1, 1990 (RMC 7-90);

5. Capital gains tax (CGT) on capital gains realized from sale, exchange or disposition of shares of stock in any domestic corporation under Section 24 (e) (2) of the Tax Code, as amended;

6. All other income taxes as provided for and imposed under Title II of the Tax Code, as amended; and

7. The 3% franchise tax on gross which shall be in lieu of all taxes, franchise or earnings thereof.

accept the payment unless petitioner also paid the realty taxes.[7]

On 2 July 1999, respondent threatened to close down petitioner's operations. Hence, on 3 July 1999, petitioner instituted a complaint for prohibition and mandamus with prayer for a temporary restraining order or writ of preliminary injunction. This case was raffled to RTC-Branch 3. On the same date, respondent served a Cease and Desist Order on petitioner.[8]

On 20 January 2000, during the pendency of the complaint, petitioner paid its realty taxes of ₱2,043,265 under protest.[9] Petitioner resumed its business, rendering the other issues raised in petitioner's complaint moot. Consequently, the only issue left for resolution is whether petitioner is exempt from the realty tax under Section 5 of RA 7678.

The Ruling of RTC-Branch 3

On 28 March 2001, RTC-Branch 3 issued the following Order:

WHEREFORE, premises considered, the Court hereby declares that the real estate, buildings and personal property of plaintiff Digital Telecommunications Philippines, Inc. which are used in the operation of its franchise are exempt from payment of real property taxes, but those not so used should be held liable thereto.[10]

In view of the foregoing, this Office hereby holds that Digitel is exempt from any and all duties, taxes and assessments on the importation of radio and message handling equipment, machineries, pagers, accessories, spare parts and all other goods and articles used in connection with its business conducted under its franchise, including Value Added Tax (VAT).

Very truly yours,

RUBEN D. TORRES
Executive Secretary

[7] *Id.* at 10.

[8] *Id.*

[9] Records, p. 236.

[10] *Rollo*, p. 40.

RTC-Branch 3 reasoned that the phrase "exclusive of this franchise" in the first sentence of Section 5 of RA 7678 limits the real properties that are subject to realty tax only to those which are not used in petitioner's telecommunications business. In short, petitioner's real properties used in its telecommunications business are not subject to realty tax.[11]

On 1 May 2001, respondent moved for reconsideration. Before acting on the motion, the Presiding Judge of RTC-Branch 3 voluntarily inhibited himself because the newly-elected mayor of Batangas City was his *kumpadre*.[12] The case was re-raffled to RTC-Branch 8.

The Ruling of RTC-Branch 8

On 2 May 2002, RTC-Branch 8 issued an Order which reads:

WHEREFORE, the defendants' Motion for Reconsideration is hereby granted. The Order of this Court dated March 21, 2001 is hereby set aside and, in lieu thereof, judgment is hereby rendered in favor of the defendants and against the plaintiff:

- DISMISSING the Amended Complaint;

- DECLARING that the plaintiff Digital Telecommunications Philippines, Inc., under its legislative franchise RA No. 7678, is not exempted from the payment of real property tax being collected by the defendant City of Batangas and, accordingly,

- ORDERING said plaintiff to pay the City of Batangas real estate taxes in the amount of Ph4,620,683.33 which was due as of January, 2000, as well as those due thereafter, plus corresponding interest and penalties.[13]

On 29 May 2002, petitioner moved for reconsideration. On 19 November 2002, RTC-Branch 8 denied petitioner's motion for reconsideration.

Hence, this petition.

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[11] Records, p. 250.

[12] *Id.* at 311.

[13] *Rollo*, pp. 25-26.

The Issue

The sole issue for resolution is whether, under the first sentence of Section 5 of RA 7678, petitioner's real properties used in its telecommunications business are exempt from the realty tax.

Petitioner's Contentions

Petitioner contends that its exemption from realty tax is based on the first sentence of Section 5 of RA 7678. Petitioner claims that the evident purpose of the phrase "**exclusive of this franchise**" is to limit the real properties that are subject to realty tax only to properties that are not used in petitioner's telecommunications business.[14] Petitioner asserts that the phrase "exclusive of this franchise" must not be construed as a useless surplusage. Petitioner points out that its exemption from realty tax was affirmed in two separate opinions, one rendered by the Office of the President on 12 March 1996 and the other by the BLGF on 8 April 1997 and reaffirmed on 4 January 1999.[15]

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

[15] *Id.* at 63-66.

January 4, 1999

ATTY. WILLIAM S. PAMINTUAN
Senior Vice President-Legal Services
Digital Telecommunications Philippines, Inc. (DIGITEL)
110 E. Rodriguez Jr. Avenue
Bagumbayan, Quezon City

Sir:

This refers to your letter dated October 19, 1998, seeking the assistance of this Bureau to render an opinion affirming its previous position that real properties of DIGITEL which are used in the operation of its franchise are exempt from payment of real property taxes.

In this connection, enclosed is a copy of our 2nd Indorsement of the same date addressed thru the Regional Director for Local Government Finance, Department of Finance, Region IV, to the Provincial Assessor of Batangas, the dispositive portion of which states as follows:

> ". . . in adherence to the aforementioned March 12, 1996 pronouncement of the Office of the President, this Bureau, in its November 9, 1998 letter..., likewise maintained the same stand, which in effect expressed that 'the claim for exemption of that company from the payment

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of real property taxes on the real properties which are used in the operation of . . . (the company's) franchise is hereby deemed meritorious.'

"In view thereof, the said Regional Director for Local Government Finance and the Provincial Assessor are hereby enjoined to implement the subject Opinions rendered by the Offices of the President and the Department of Finance, thru the Bureau of Local Government Finance, on matters pertaining to the real property tax exemption covering the real properties of DIGITEL which are used in the operation of its franchise."

We trust that this will clarify matters.

Very truly yours,

Angelina M. Magsino
Deputy Executive Director
Officer-in-Charge

2nd Indorsment

January 4, 1999

Respectfully returned, thru the Regional Director for Local Government Finance, Department of Finance, Region IV, People Mansion Compound, Batangas City, to the Provincial Assessor of Batangas, same city.

This pertains to the "contrary opinion" expressed by the said Provincial Assessor concerning the letter dated April 18, 1997 of this Bureau, which held that "the real properties of DIGITEL, which are used in the operation of its franchise, are hereby found to be exempt from the payment of real property taxes."

It is worthwhile to note that the stand/opinion expressed in the abovementioned letter dated April 8, 1997 of this Bureau, including those that similarly resolved real property tax exemption controversies of other telecommunication companies, were primarily based on the Opinion dated September 21, 1981 of the Office of the President stating that the phrase "exclusive of this franchise" found in Section 7 of R.A. No. 3662 (RETELCO's franchise) "has been construed to mean as excluding real estate, buildings and personal property of defendant RETELCO, Inc., directly used in the operation of its franchise, for which the latter is not subject to real estate tax as other persons or corporations are now or hereafter may be required by law to pay."

Apparently, the abovementioned "contrary opinion" of the Provincial Assessor of Batangas was prompted by the claim of DIGITEL for real property tax exemption on its real properties situated in Batangas Province, which are used in the operation of its franchise; and the Court of Appeals Decision, CA-GR CV No. 21897, promulgated on January 21, 1992, entitled, "*The City Government of Batangas vs. Republic Telephone Company, Inc. (RETELCO)*,

The BLGF declared that "the real properties of Digitel, which are used in the operation of its franchise are x x x found to be

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that "RETELCO is liable to pay the real property taxes on its real estate, building and personal property excluding its franchise." (Underscoring supplied) Hence, "RETELCO is ordered to pay the City of Batangas...the real property tax on said defendants' real estate, buildings and personal property located at Batangas City, covering the period from 1972 to June, 1980 and the real property tax due thereafter, plus the interest and penalty as provided by law."

In a letter dated October 19, 1998 (copy attached), the Senior Vice President Legal Service, Digital Telecommunications, Inc. (DIGITEL), advanced that, while most local government units "recognize and honor the said letter-opinion" of this Bureau, "the province of Batangas... rejected our (DIGITEL's) claim and refuses to honor the learned opinion of this (BLGF's) Office," thus, it argued that:

> 1. "(T)he Court of Appeals Decision cannot be used as basis for the refusal to honor the opinion of this (BLGF's) Honorable Office and the denial of DIGITEL's claim for real property tax exemption" considering that DIGITEL "is not a party to the said case."
>
> 2. "(I)t cannot be said that the Court of Appeals decision has established a precedent upon which other telecommunications companies can be compelled to comply with. x x x In the case of Miranda Imperial (77 Phil. 1066), the Supreme Tribunal categorically stated that 'only decision of this Honorable Court establish jurisprudence or doctrines in this jurisdiction.' Consequently, decisions of subordinate court are only persuasive in nature, and can have no mandatory effect (Paras, Civil Code of the Philippines annotated)."
>
> 3. "(R)eal property tax is not imposed on a franchise (as the said Court of Appeals Decision resolved it to be), because it (the real property tax) is imposed specifically on real properties such as land, buildings and machineries. A franchise is never subject to real property tax. It is subject to a franchise tax."

This Bureau finds the foregoing arguments of DIGITEL tenable considering the fact that, actually, even the Office of the President (OP) appears to share the same stand when OP, notwithstanding the subject January 21, 1992 Court of Appeals Decision, reaffirmed its position on the matter under a letter dated March 12, 1996, which categorically declared that "DIGITEL, too, shall be subject only to the following taxes, to wit:

> "1. Taxes on its real estate, buildings and personal property not used in connection with the conduct of its business under its franchise, as other persons or corporations are now or hereafter may be required to pay; (Underscoring supplied)
>
> x x x x x x x x x

exempt from the payment of real property taxes beginning 1 January 1993. However, all other properties of that company not used in connection with the operation of its franchise shall remain taxable."[16]

Petitioner further argues that under the Local Government Code, the realty tax is imposed on all lands, buildings, machineries and other improvements attached to real property. A franchise is an incorporeal being, a special privilege granted by the legislature. Hence, to read the first sentence of Section 5 of RA 7678 to mean that the franchisee shall pay taxes on its real properties used in its telecommunications business would render the phrase "exclusive of this franchise" meaningless.

Petitioner admits that the franchise granted under RA 7678 is a personal property, but the franchise is not the "personal property" referred to in the first sentence of Section 5. Petitioner asserts that the phrase "real estate, buildings, and personal property" in the first sentence of Section 5 refers solely to real properties and does not include personal properties. Petitioner explains thus:

It is likewise important to note hereon that, in adherence to the aforementioned March 12, 1996 pronouncement of the Office of the President, this Bureau, in its November 9, 1998 letter..., likewise maintained the same stand, which in effect expressed that "the claim for exemption of that company from the payment of real property taxes on the real properties which are used in the operation of ... (the company's) franchise is hereby deemed meritorious."

In view thereof, the said Regional Director for Local Government Finance and the Provincial Assessor are hereby enjoined to implement the subject Opinions rendered by the Offices of the President and the Department of Finance, thru the Bureau of Local Government Finance, on matters pertaining to the real property tax exemption covering the real properties of DIGITEL which are used in the operation of its franchise.

Be guided accordingly.

ANGELINA M. MAGSINO
Deputy Executive Director
Officer-in-Charge

[16] *Id.* at 13.

For PTEs (public telecommunication entities), these personal properties include the switches which were installed in the exchange buildings as well as the outside and inside plant equipment. Initially, these telecommunications materials and equipment were personal property in character. But, having been installed and made operational by being attached to the exchange building, they are now converted into immovables or real property. **That being the case, the phrase *"real estate, buildings and personal property"* actually refer[s] to properties that are liable for real estate tax.** And, Congress having made the qualification with the phrase "exclusive of this franchise," only such real properties that are not used in furtherance of the franchise are subject to real property tax.[17] (Emphasis supplied)

Respondent's Contentions

Respondent contends that the phrase "exclusive of this franchise" does not mean that petitioner is exempt from the realty tax on its real properties used in its telecommunications business. The first sentence of Section 5 of RA 7678 makes petitioner "liable to pay the same taxes for its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are or hereafter may be required by law to pay." This shows the clear intent of Congress to tax petitioner's real and personal properties.[18] Respondent asserts that the phrase "exclusive of this franchise" is a qualification of the broad declaration on the franchisee's liability for taxes which is the main thrust of the first sentence of Section 5. Respondent points out that petitioner is paying taxes and fees on all its motor vehicles, which are personal properties, without distinction.[19] Respondent also points out that petitioner admits that the first sentence of Section 5 of RA 7678 is ambiguous with respect to the phrase "exclusive of this franchise,"[20] thus petitioner resorted to the rules on statutory construction.[21]

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[17] *Id.* at 14.

[18] *Id.* at 181-182.

[19] *Id.* at 187-188.

[20] *Id.* at 189.

[21] *Id.* at 161.

Respondent adds that the legislative franchises granted to other telecommunications companies contain the same phrase "exclusive of this franchise." This shows the intent of Congress to make franchisees liable for the realty tax rather than exempt them even if the real properties are used in their telecommunications business.[22]

The Office of the Solicitor General (OSG), appearing for respondent, contends that the first sentence of Section 5 provides for petitioner's general liability to pay taxes and does not provide for petitioner's exemption from realty tax. The OSG invokes the doctrine of last antecedent which is an aid in statutory construction. The OSG argues that under this doctrine, the qualifying word or phrase only restricts the word or phrase to which the qualifying word or phrase is immediately associated and not the word or phrase which is distantly or remotely located. In the first sentence of Section 5, the phrase "exclusive of this franchise" restricts only the words "personal property" which immediately precede the phrase "exclusive of this franchise." This means that the franchise, an intangible personal property, should be excluded from the personal properties that are subject to taxes under the first sentence of Section 5. The OSG adds that the use of the comma to separate "real estate, buildings" from "personal property" exerts a dominant influence in the application of the doctrine of last antecedent. Further, the OSG reiterates that laws granting exemption from tax are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power.

The Ruling of the Court

The petition has no merit.

Section 5 of RA 7678 imposes taxes and does not exempt from realty tax

The issue in this case involves the interpretation of the phrase "**exclusive of this franchise**" in the first sentence of Section 5 of RA 7678.

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[22] *Id.* at 185-186.

Section 5 of RA 7678 states:

Sec. 5. *Tax Provisions*. — **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay**. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

The first sentence of Section 5 of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905.[23] It is also the same provision

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[23] Act No. 1368 entitled "An Act to provide for the granting of a franchise to construct, maintain, and operate telephone and telegraph systems, and to carry on other electrical transmission business in and between the provinces, cities, and municipalities of the Island of Luzon." Enacted on 6 July 1905.

Sec. 5 reads: "Sec. 5. **The grantees, their successors or assigns, shall be liable to pay the same taxes on their real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** The grantees, their successors or assigns, shall further pay to the Insular Treasurer each year, within ten days after the audit and approval of the accounts as prescribed in section four of this Act, two per centum of all gross receipts of the telephone, telegraph, or other electrical transmission business transacted under this franchise by the grantees, their successors or assigns, and the said percentage shall be in lieu of all taxes on the franchise or earnings thereof." (Boldfacing and underscoring supplied)

that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company,[24] Smart Information Technologies, Inc.,[25] and Globe Telecom.[26] Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase "exclusive of this franchise," until petitioner filed the present case on 3 July 1999.[27]

The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to pay the following taxes: (1) "the same taxes on its real estate, buildings, **and personal property exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay"; (2) "franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise";[28] and (3) "income taxes payable under Title II of the National Internal Revenue Code."

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[24] Republic Act No. 7082 entitled "An Act Further Amending Act No. 3436, as Amended, Entitled 'An Act Granting to the Philippine Long Distance Telephone Company A Franchise to Install, Operate and Maintain A Telephone System Throughout the Philippine Islands,' Consolidating The Terms and Conditions of the Franchise Granted to the Philippine Long Distance Telephone Company, and Extending the Said Franchise by Twenty-Five (25) Years From the Expiration of the Terms Thereof as Provided in Republic Act No. 6146."

[25] Republic Act No. 7294 entitled "An Act Granting Smart Information Technologies, Inc. (SMART) A Franchise To Establish, Install, Maintain, Lease And Operate Integrated Telecommunications/ Computer/Electronic Services And Stations Throughout The Philippines For Public Domestic And International Telecommunications, And For Other Purposes."

[26] Republic Act No. 4630 entitled "An Act Amending Act Numbered Thirty-Four Hundred Ninety-Five, As Amended, Granting Globe Wireless, Limited, Of The Philippines, A Franchise To Construct, Maintain And Operate In The Philippines Stations For The Reception And Transmission Of Wireless Messages."

[27] In *Digital Telecommunications, Inc. (Digitel) v. Province of Pangasinan* (516 SCRA 541), the Province sued *Digitel* on 1 March 2000 for collection of unpaid real estate taxes. *Bayantel Telecommunications, Inc.* (484 SCRA 169) sued the City of Quezon in 2002 to prevent the collection of real estate taxes.

[28] Republic Act No. 7716 abolished the franchise tax on telecommunications companies effective 1 January 1996 and replaced it with a 10% value-added

The crux of the controversy lies in the interpretation of the phrase "exclusive of this franchise" in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term "personal property" shall not include petitioner's franchise, which is an intangible personal property.

We rule that the phrase "exclusive of this franchise" simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and **the list excludes the franchise**. Thus, the first sentence provides:

> The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay. (Emphasis supplied)

A plain reading shows that the phrase "exclusive of this franchise" is meant to **exclude** the legislative franchise from the properties subject to taxes under the first sentence. In effect, petitioner's franchise, which is a personal property, is not subject to the taxes imposed on properties under the first sentence of Section 5.

However, petitioner's gross receipts from its franchise are subject to the "franchise tax" under the second sentence of Section 5. Thus, the second sentence provides:

> In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a **franchise tax** as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; x x x (Emphasis supplied)

In short, petitioner's franchise is excluded from the properties taxable under the first sentence of Section 5 but the gross receipts

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tax on telecommunications companies under Section 102 (now Section 108 of the Tax Reform Act of 1997, RA 8424) of the National Internal Revenue Code. RA 9337 increased the rate of VAT to 12% on 1 January 2006.

from its franchise are expressly taxable under the second sentence of the same Section.

The first sentence of Section 5 imposes on the franchisee the "**same taxes**" that non-franchisees are subject to with respect to real and personal properties. The clear intent is to put the franchisees and non-franchisees **in parity** in the taxation of their real and personal properties. Since non-franchisees have obviously no franchises, the franchise must be excluded from the list of properties subject to tax to maintain the parity between the franchisees and non-franchisees. However, the franchisee is taxable separately from its franchise. Thus, the second sentence of Section 5 imposes the "franchise tax" on gross receipts, which under Republic Act No. 7716 has been replaced by the 10% Valued Added Tax effective 1 January 1996.[29]

Section 5 can be divided into three parts. First is the first sentence which imposes taxes on real and personal properties, excluding one property, that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. Second is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And third is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees.

Petitioner claims that the first sentence refers only to real properties, and that the phrase "exclusive of this franchise" exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on "real estate" and on "personal property." Clearly, the first sentence does not refer only to taxes on real properties, but also to taxes on personal properties. The trial court correctly observed that petitioner pays taxes on its motor vehicles,[30] which are personal

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[29] See note 28.

[30] *Rollo*, p. 21.

properties, that are used in its telecommunications business.[31] There is also the documentary stamp tax on transactions involving real and personal properties, which petitioner and other taxpayers are liable for.[32]

A franchise granted by Congress to operate a private radio station for the franchisee's communications in deep-sea fishing shows that the first sentence of Section 5 of RA 7678 does not refer to real properties alone. Section 6 of Republic Act No. 3218 (RA 3218), entitled *An Act Granting Batas Riego De Dios A Franchise To Construct, Maintain And Operate Private Radio Stations For Radio Communications In Its Deep-Sea Fishing Industry*, provides:

> SECTION 6. The grantee shall be liable (1) to pay the same taxes on its real estate, **building, fishing boats and personal property, exclusive of this franchise** as other persons or corporations are now, or hereafter may be required by law to pay, and shall further be liable (2) to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise. (Emphasis supplied)

The inclusion of "**fishing boats**," personal properties that can never be attached to a land or building so as to make them real properties, demonstrates that Section 6 of RA 3218, like the first sentence of Section 5 of RA 7678, not only applies to real properties but also to personal properties.

Second, there is no language in the first sentence of Section 5 expressly or even impliedly exempting petitioner from the **realty tax**. The phrases "exemption from real estate tax," "free from real estate tax" or "not subject to real estate tax" do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both

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[31] *See also* Republic Act No. 8794 entitled "An Act Imposing A Motor Vehicle User's Charge On Owners of All Types of Motor Vehicles And For Other Purposes."

[32] Sections 173, 174, 195 and 196 of the National Internal Revenue Code.

real and personal properties, excluding only the intangible personal property that is the franchise.

A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to the "**same taxes** currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations," taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the "same taxes" to realty tax only but even to "those taxes" that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

The phrase "personal property exclusive of this franchise" merely means that "personal property" does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the franchise, which is an intangible personal property, shall not be deemed personal property.

The historical usage of the phrase "exclusive of this franchise" in franchise laws enacted by Congress indubitably shows that the phrase is not a grant of tax exemption, but an exclusion of one type of personal property subject to taxes, and the excluded personal property is the franchise. Thus, the franchises of telecommunications companies in Republic Act Nos. 4137,[33] 5692,[34] 5739,[35]

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[33] An Act Granting The Luzon Broadcasting Company, Inc., A Franchise to Construct, Maintain And Operate Radio Broadcasting Stations Within The Philippines For Commercial Purposes.

[34] An Act Granting Alfredo Angeles A Franchise To Install, Maintain And Operate An Electric Light, Heat, Power System And An Ice Plant In The Municipality Of Molave, Province Of Zamboanga Del Sur.

[35] An Act Granting Leonides C. Pengson A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The Municipality Of Makati, Province Of Rizal, And To Sell And Distribute Ice In The Cities Of Pasay, Quezon, And The Municipality Of Makati, Province Of Rizal.

5785,[36] 5790,[37] 5791,[38] 5795,[39] 5810,[40] 5847,[41] 5848,[42] 5856,[43]

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[36] An Act Approving Any Assignment, Sale And Transfer Of The Franchise Granted To Juan R. Alcasid By Republic Act Numbered Forty-Five Hundred Six, And Of The Franchise Granted To Feliciana S. Bermudez Under The Republic Act Numbered Eighteen Hundred Forty Which Was Later Assigned, Sold And Transferred To Juan R. Alcasid Duly Approved By Congress Under Republic Act Numbered Forty-Five Hundred Fifty-Three, In Favor Of Rural Electric, Inc.

[37] An Act Granting Romulo Rodriguez, Jr., A Franchise To Construct, Maintain And Operate Radio Broadcasting And Television Stations In Gingoog City.

[38] An Act Granting Burauen Electric And Ice Plant Corporation A Franchise To Construct, Operate And Maintain An Electric Light And Power System, An Ice Plant And Cold Storage In The Municipality Of Burauen, Province Of Leyte, And To Sell Electric Current, Ice And To Supply Cold Storage Therein.

[39] An Act Granting Elpideforo Cuna, Jr. A Franchise To Construct, Operate And Maintain Ice Plants And Cold Storage, To Distribute And Sell Ice So Manufactured And Furnish Cold Storage In The Cities Of Pasay, Caloocan, Quezon And Manila And In Paranaque In The Province Of Rizal.

[40] An Act Granting Philippine Greenhills Development Corporation A Franchise To Establish, Maintain And Operate Private, Fixed, Point-To-Point, Private Coastal, Land-based, Aeronautical And Land-Mobile Radio Stations For The Transmission And Reception Of Wireless Messages.

[41] An An Act Granting Pedro R. Luspo, Sr. A Franchise To Construct, Operate And Maintain Radio Broadcasting And Television Stations In Northern Mindanao.

[42] An Act Granting Felipe C. Adamos A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The Municipality Of San Felipe, Province Of Zambales And To Sell Ice And Supply Cold Storage In The Said Province.

[43] An Act Granting Katigbak Enterprises, Incorporated, A Franchise To Construct, Operate And Maintain A Radio Broadcasting Station In The City Of San Pablo.

5857,[44] 5913,[45] 5914,[46] 5929,[47] 5937,[48] 5958,[49] 5959,[50] 5974,[51] 5993,[52] 5994,[53] 6002,[54]

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[44] An Act Amending Section Five Of Republic Act Numbered Fifty-One Hundred And Six, Entitled An Act Granting Rafael C. Aquino A Franchise To Install, Maintain And Operate An Electric Light, Heat, Power System, An Ice Plant And Cold Storage In The Municipalities Of Bayugan And Prosperidad, Province Of Agusan.

[45] An Act Granting Far Corporation A Franchise To Construct, Operate And Maintain Radio Broadcasting Stations In Luzon.

[46] An Act Granting Basilan Broadcasting Corporation A Franchise To Establish, Operate And Maintain Radio Broadcasting Stations In Mindanao.

[47] An Act Granting Felipe Dela Cruz A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage And To Sell And To Supply Cold Storage Facilities In Quezon City.

[48] An Act Granting The Asiatic Integrated Corporation, A Franchise To Construct, Maintain And Operate An Ice Plant And Cold Storage In The Municipality Of Mariveles, Province Of Bataan.

[49] An Act Granting Bidcor Telephone Company, Inc. A Franchise To Install, Operate And Maintain A Telephone System In The Province Of South Cotabato.

[50] An Act Granting Lourdes P. San Diego A Franchise To Construct, Operate And Maintain Ice Plants And Cold Storage In The City Of Iriga And In The Municipality Of Balatan, Province Of Camarines Sur, And To Sell Ice And Supply Cold Storage Therein.

[51] An Act Granting Iriga Telephone Company, Incorporated, A Franchise To Install, Operate And Maintain A Telephone System In The City Of Iriga.

[52] An Act Granting Eusebio G. Bernales, Sr. A Franchise To Install, Operate And Maintain An Electric Light, Heat and Power System, And An Ice Plant In The Municipality Of Bacolod, Province Of Lanao Del Norte.

[53] An Act Granting Garcia, Diapo and Co., A Franchise For An Electric Light, Heat And Power System In The Municipalites Of Banga And New Washington, Both In The Province Of Aklan.

[54] An Act Granting Jesus Arevalo A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The Municipality Of San Fernando, Province Of Masbate, And To Sell Ice And Cold Storage In The Municipality Of Batuan, San Jacinto And Monreal, All In The Province Of Masbate.

6006,[55] 6007,[56] 6013,[57] 6024,[58] 6097,[59] 6510,[60] 6536,[61] and 6530[62] contain the following **common tax provision**:

> The grantee shall be liable to pay the same taxes, **unless exempted therefrom**, on its business, real estate, buildings, and personal property, **exclusive of this franchise**, as other persons or corporations are now or hereafter may be required by law to pay. (Emphasis supplied)

The phrase "**unless exempted therefrom**" in the common provision clearly clarifies that the phrase "exclusive of this franchise" does not grant any tax exemption. To claim tax exemption, there must be an express exemption from tax in another provision of law. On the other hand, the deletion of the

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[55] An Act Granting Restituto Palma Gil A Franchise For An Electric Light, Heat And Power System In The Municipality Of Caraga, Province Of Davao Oriental.

[56] An Act Granting Combined Broadcasting, Inc., A Franchise To Construct, Operate And Maintain A Radio Broadcasting Station In The City Of Lipa And The Province Of Batangas.

[57] An Act Granting A Franchise For An Electric Light, Heat And Power System To Leopoldo T. Calderon, Jr., In The Municipality Of Pulilan, Province Of Bulacan.

[58] An Act Amending Republic Act Numbered Forty-Five Hundred Fifty (Re: CE Plant In Hagonoy, Davao Del Sur).

[59] An Act Granting Enrique M. Reyes A Franchise To Install, Maintain And Operate A Telephone System In The Province Of Davao Del Sur.

[60] An Act Granting The Arcadia Agricultural And Development Co., Inc., A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In Barrio Bagbaguin, Caloocan City And To Sell And Distribute Ice And To Supply Cold Storage In The City Of Caloocan And Suburbs.

[61] An Act Granting Bayani Pingol A Franchise To Construct, Operate And Maintain An Ice Plant And Cold Storage In The City Of Nage And To Sell Ice And Supply Cold Storage In Certain Municipalities In The Province Of Camarines Sur And The Said City.

[62] An Act Granting Makati Broadcasting Corporation A Franchise To Construct, Operate And Maintain Radio Broadcasting Stations Within The Greater Manila Area And Rizal Province.

phrase "unless exempted therefrom" from the common provision does not give rise to any tax exemption.

Bayantel and Digitel Cases

In *City Government of Quezon City v. Bayan Telecommunications, Inc.*,[63] this Court's Second Division held that "all realties which are actually, directly and exclusively used in the operation of its franchise are 'exempted' from any property tax." The Second Division added that Bayantel's franchise being national in character, the "exemption" granted applies to all its real and personal properties found anywhere within the Philippines. The Second Division reasoned in this wise:

> The legislative intent expressed in the phrase '**exclusive of this franchise'** cannot be construed other than distinguishing between two (2) sets of properties, be they real or personal, owned by the franchisee, namely, (a) those actually, directly and exclusively used in its radio or telecommunications business, and (b) those properties which are not so used. It is worthy to note that the properties subject of the present controversy are only those which are admittedly falling under the first category.
>
> To the mind of the Court, Section 14 of Rep. Act No. 3259 effectively works to grant or delegate to local governments of Congress' inherent power to tax the franchisee's properties belonging to the second group of properties indicated above, that is, all properties which, "exclusive of this franchise," are not actually and directly used in the pursuit of its franchise. As may be recalled, the taxing power of local governments under both the 1935 and the 1973 Constitutions solely depended upon an enabling law. Absent such enabling law, local government units were without authority to impose and collect taxes on real properties within their respective territorial jurisdictions. While Section 14 of Rep. Act No. 3259 may be validly viewed as an implied delegation of power to tax, the delegation under that provision, as couched, is limited to impositions over properties of the franchisee which are not actually, directly and exclusively used in the pursuit of its franchise. Necessarily, other properties of Bayantel directly used in the pursuit of its business are beyond the

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[63] G.R. No. 162015, 6 March 2006, 484 SCRA 169, 181.

pale of the delegated taxing power of local governments. In a very real sense, therefore, real properties of Bayantel, save those exclusive of its franchise, are subject to realty taxes. **Ultimately, therefore, the inevitable result was that all realties which are actually, directly and exclusively used in the operation of its franchise are "exempted" from any property tax.** (Emphasis supplied)

In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*,[64] this Court's Third Division ruled that Digitel's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax under the first sentence of Section 5 of RA 7678. The Third Division explained thus:

> The more pertinent issue to consider is whether or not, by passing Republic Act No. 7678, Congress intended to exempt petitioner DIGITEL's real properties actually, directly and exclusively used by the grantee in its franchise.
>
> The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code had already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:
>
> > The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.
>
> In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of its franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner.

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[64] G.R. No. 152534, 23 February 2007, 516 SCRA 541, 559-560.

Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the "same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay."

The heading of Section 5 is "Tax Provisions," not Tax Exemptions. To reiterate, the phrase "exemption from real estate tax" or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase "exclusive of this franchise" in the first sentence of Section 5 merely qualifies the phrase "personal property" to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the "franchise tax." Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase "exclusive of this franchise" in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao*,[65] the Court held that "tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference."

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[66]

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[65] G.R. No. 143867, 25 March 2003, 399 SCRA 442, 453.

[66] RA No. 7229 *expressly* provides that original provisions of the franchise of Clavecilla under Republic Act No. 402, as amended, *which have not been repealed*, shall continue in full force and effect. The clear intent of the

RCPI case

In *Radio Communications of the Philippines, Inc. (RCPI) v. Provincial Assessor of South Cotabato*,[67] the Court's First Division held that RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are subject to real property tax. The Court added that:

> RCPI cannot also invoke the equality of treatment clause under Section 23 of Republic Act No. 7925. **The franchises of Smart, Islacom, TeleTech, Bell, Major Telecoms, Island Country, and IslaTel,68 all expressly declare that the franchisee shall pay the real estate tax, using words similar to Section 14 of RA 2036, as amended.** The provisions of these subsequent telecommunication franchises imposing the real estate tax on franchisees only confirm that RCPI is subject to the real estate tax. Otherwise, RCPI will stick out like a sore thumb, being the only telecommunications company exempt from the real estate tax, in mockery of the spirit of equality of treatment that RCPI is invoking, not to mention the violation of the constitutional rule on uniformity of taxation.
>
> It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted. (Emphasis supplied)

In *RCPI*, the Court emphasized that telecommunications companies which were granted legislative franchise are liable to realty tax. The intent to grant realty tax exemption cannot be discerned from Republic Act No. 405469 and neither from the

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law is that provisions as of the enactment of RA No. 7229 shall remain repealed and shall not be reenacted with the passage of RA No. 7229. Thus, Section 11 of RA No. 7229 states —

> All other provisions of Republic Act No. 402, as amended by Republic Act Nos. 1618 and 4540, and other provisions of Batas Pambansa Blg. 95 which are not inconsistent with the provisions of this Act and are *still unrepealed* shall continue to be in full force and effect. (Emphasis supplied in the original)

Concurring Opinion of Justice Antonio T. Carpio in *PLDT v. City of Davao*, 447 Phil. 571, 591-592 (2003).

[67] G.R. No. 144486, 13 April 2005, 456 SCRA 1, 12-14.

legislative franchises of other telecommunications companies. Tax exemptions granted to one or more, but not to all, telecommunications companies similarly situated will violate the constitutional rule on uniformity of taxation.[70]

The intent of Congress is to make legislative franchisees liable to tax

In *PLDT v. City of Davao*,[71] it was observed that after the imposition of VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax.[72] More importantly, the uniform tax provision in these new franchises expressly states that the franchisee shall pay not only all taxes, except specific tax, under the National Internal Revenue Code, but also all taxes under "**other applicable laws**,"[73] one of which is the Local Government Code which imposes the realty tax.[74]

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[68] The tax provision of all these franchises partly reads:

"The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunication entities are now or hereafter may be required by law to pay. x x x"

[69] Republic Act No. 4054 entitled "An Act Granting the Radio Communications of the Philippines a Franchise to Establish Radio Stations for Domestic Telecommunications."

[70] Concurring Opinion of Justice Antonio T. Carpio in *PLDT v. City of Davao*, 447 Phil. 571, 596-597 (2003).

[71] 447 Phil. 571 (2003).

[72] From September 2000 to July 2001, all the fourteen telecommunications franchises approved by Congress uniformly and expressly state that the franchisee shall be subject to all taxes under the National Internal Revenue Code, and other applicable laws.

[73] *Supra* note 66 at 596.

[74] Section 197, Title Two, Book II of Republic Act No. 7160 (RA 7160) or the Local Government Code provides:

Sec. 197. Scope.— This title shall govern the administration, appraisal, assessment, levy and collection of real property tax.

In fact, Section 12 of Republic Act No. 9180 (RA 9180),[75] the legislative franchise of Digitel Mobile, a 100%-owned subsidiary of petitioner, states that the franchisee, its successors or assigns shall be subject to the payment of "**all taxes**, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, **and other applicable laws**."[76] Section 12 of RA 9180 provides:

> SECTION 12. Tax Provisions. — **The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws**: Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives, or privileges granted under any relevant law: Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications franchises shall likewise be extended to the grantee.
>
> The grantee shall file the return with the city or province where its facility is located and pay the income tax due thereon to the Commissioner of Internal Revenue or his duly authorized representatives in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Emphasis supplied)

Thus, Digitel Mobile is subject to tax on its real estate and personal properties, whether or not used in its telecommunications business.

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[75] An Act Granting the Digitel Mobile Phils., Inc. A Franchise to Construct, Install, Establish, Operate and Maintain Telecommunications Systems Throughout the Philippines.

[76] RA 9180, Section 12. Tax Provisions. — The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws; Provided that nothing herein shall be construed as repealing any specific tax exceptions, incentives, or privileges granted under any relevant law; Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications franchise shall likewise be extended to the grantee.

In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*,[77] the Court ruled that "the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority — he who claims an exemption must be able to justify his claim by the clearest grant of statute." A person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.[78]

BLGF Opinions

On 25 October 2004, the BLGF issued Memorandum Circular No. 15-2004.[79] This circular reversed the BLGF's Letter-Opinion dated 8 April 1997 recognizing realty tax exemption under the phrase "exclusive of this franchise." This later circular states that the real properties owned by Globe and Smart Telecommunications and all other telecommunications companies similarly situated are subject to the realty tax. The BLGF has

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[77] G.R. No. 133834, 28 August 2006, 499 SCRA 664.

[78] Section 206 of Title Two, Book II of RA 7160 states:

> Sec. 206. Proof of Exemption of Real Property from Taxation. — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claims including corporate charters, title of ownership, articles of incorporation, by laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
>
> If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

[79] Reversal of the Real Property Tax Exemption Previously Granted to GLOBE Telecommunications (GLOBE for brevity) in line with the Supreme Court (SC) Decision (G.R. No. 143867) dated August 22, 2001, and the Central Board of Assessment Appeals (CBAA) Decision (Case No. V-17) dated January 31, 2002.

reversed its opinion on the realty tax exemption of telecommunications companies. Hence, petitioner's claim of tax exemption based on BLGF's opinion does not hold water. Besides, the BLGF has no authority to rule on claims for exemption from the realty tax.[80]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 2 May 2002 and 19 November 2002 Orders of the Regional Trial Court, Branch 8, Batangas City, in Civil Case No. 5343.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona and *Azcuna, JJ.,* on official leave.

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[80] Section 33, Chapter 4, Title II, Book IV of Executive Order No. 292 or "The Administrative Code of 1987" provides:

> Sec. 33. *Bureau of Local Government Finance*. — The Bureau of Local Government Finance, which shall be headed by and subject to the supervision and control of an Executive Director who shall be appointed by the President upon the recommendation of the Secretary, shall have the following functions:
>
> (1) Assist in the formulation and implementation of policies on local government revenue administration and fund management;
>
> (2) Exercise administrative and technical supervision and coordination over the treasury and assessment operations of local governments;
>
> (3) Develop and promote plans and programs for the improvement of resource management systems, collection enforcement mechanisms, and credit utilization schemes at the local levels;
>
> (4) **Provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment and other related matters**;
>
> (5) Exercise line supervision over its Regional Offices/ field units within the Department Regional Administrative Coordination Office and the Local Treasury and Assessment Services; and
>
> (6) Perform such other appropriate functions as may be assigned by the Secretary or Undersecretary for Domestic Operations. (Emphasis supplied)

EN BANC

[G.R. No. 167011. December 11, 2008]

SPOUSES CARLOS S. ROMUALDEZ and ERLINDA R. ROMUALDEZ, *petitioners, vs.* **COMMISSION ON ELECTIONS and DENNIS GARAY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAW; REPUBLIC ACT NO. 8189, (VOTER'S REGISTRATION ACT); THE ON-ITS-FACE INVALIDATION OF PENAL STATUTES IS NOT APPLICABLE IN CASE AT BAR.— We reject the contentions put forth by esteemed colleagues Mr. Justice Dante O. Tinga in his Dissent, dated 2 September 2008, which are also mere reiterations of his earlier dissent against the majority opinion. Mr. Justice Tinga's incessant assertions proceed from the wrong premise. To be clear, this Court did not intimate that penal statutes are beyond scrutiny. In our Decision, dated 30 April 2008, this Court emphasized the critical limitations by which a criminal statute may be challenged. We drew a lucid boundary between an "on-its-face" invalidation and an "as applied" challenge. Unfortunately, this is a distinction which Mr. Justice Tinga has refused to understand. Let it be underscored that "on-its-face" invalidation of penal statutes, as is sought to be done by petitioners in this case, may not be allowed. Neither does the listing by Mr. Justice Tinga of what he condemns as offenses under Republic Act No. 8189 convince this Court to overturn its ruling. What is crucial in this case is the rule set in our case books and precedents that a facial challenge is not the proper avenue to challenge the statute under consideration. In our Decision of 30 April 2008, we enunciated that "the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge."

2. ID.; ID.; ID.; DOCTRINE EMBODIED IN *ROMUALDEZ* AND *ESTRADA* REMAINS GOOD LAW.— I reiterate that the doctrine embodied in *Romualdez* and *Estrada* remains good law. The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights

may be facially challenged. Under no case may ordinary penal statutes be subjected to a facial challenge. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State's ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State's power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him. As structured, Section 45 enumerates acts deemed election offenses under Republic Act No. 8189. The evident intent of the legislature in including in the catena of election offenses the violation of any of the provisions of Republic Act No. 8189 is to subsume as punishable, not only the commission of proscribed acts, but also the omission of acts enjoined to be observed. On this score, the declared policy of Republic Act No. 8189 is illuminating. The law articulates the policy of the State to systematize the present method of registration in order to establish a clean, complete, permanent and updated list of voters.

3. ID.; ID.; ID.; ALLEGATION OF VAGUENESS OF THE LAW REJECTED; PETITIONER'S FAILED TO OVERCOME THE HEAVY PRESUMPTION OF CONSTITUTIONALITY IN FAVOR OF THE LAW.— In *People v. Gatchalian,* the Court had the occasion to rule on the validity of the provision of the Minimum Wage Law, which in like manner speaks of a willful violation of "any of the provisions of this Act". This Court upheld the assailed law, and in no uncertain terms declared that the provision is all-embracing, and the same must include what is enjoined in the Act which embodies the very fundamental purpose for which the law has been adopted. Finally, as the records would show, petitioners managed to set up an intelligent defense against the informations filed below. By clearly

enunciating their defenses against the accusations hurled at them and denying their commission thereof, petitioners' allegation of vagueness must necessarily be rejected. Petitioners failed to overcome the heavy presumption of constitutionality in favor of the law. The constitutionality must prevail in the absence of substantial grounds for overthrowing the same.

TINGA, *J., dissenting opinion*:

1. POLITICAL LAW; ELECTION LAW; REPUBLIC ACT NO. 8189, (VOTER'S REGISTRATION ACT); THE VOID FOR VAGUENESS CHALLENGE SHOULD APPLY TO PENAL CASES AS MUCH AS IT DOES TO FREE SPEECH.— It was in *Romualdez v. Sandiganbayan* that the notion that void for vagueness does not apply to penal cases was fleshed out as a view of the Court. Unfortunately, that decision mistakenly assumed that Justice Mendoza's earlier opinion was his final word on the matter as it failed to take stock of the crucial clarification laid down in his subsequent Separate Opinion. The Court through this case has the golden opportunity to rectify the error, but instead it perpetuated the unsound doctrine as pronounced in *Romualdez v. Sandiganbayan*. If this error, reflective as it is of a fundamental lack of understanding of what the due process clause means, is not corrected now, it may never be corrected at all. It will stand as one of the most tragic denigrations of the Philippine constitution. From whatever perspective, the void for vagueness challenge should apply to penal cases as much as it does to free speech cases.

2. ID.; ID.; ID.; IF VAGUENESS IS NOT APPROPRIATE FOR TESTING THE VALIDITY OF PENAL STATUTES, IT NECESSARILY FOLLOWS THAT A VAGUE PENAL STATUTE CANNOT BE SCRUTINIZED OR INVALIDATED BECAUSE IT IS VAGUE.— The *ponente* now begrudgingly concedes that the assailed decision "did not intimate that penal statutes are beyond scrutiny". Yet that bare, ambiguous statement hardly addresses the constitutional flaws of the earlier ruling. In the next breath, the *ponente* asserts that the doctrine embodied in *Romualdez* "remains good law". 8 What is the so-called *Romualdez* doctrine? To quote from *Romualdez:* "*It is best to stress at the outset that the overbreadth and*

the vagueness doctrines have special application only to free-speech cases. . . they are not appropriate for testing the validity of penal statutes." The Court in *Romualdez* went as far as to observe that no penal laws in the Philippines have ever been invalidated on the ground of vagueness. If vagueness is not appropriate for testing the validity of penal statutes, it necessarily follows that a vague penal statute cannot be scrutinized or invalidated because it is vague. *Ergo, a vague penal statute is constitutional. That was the essence of Romualdez, as well as our earlier ruling herein.*

3. ID.; ID.; ID.; SINCE THE DECISION UPHOLDS SECTION 450(j) OF REPUBLIC ACT NO. 8189, THE VIOLATION OF ANY PROVISION OF THAT LAW WILL NOW CONSTITUTE AN ELECTION OFFENSE PUNISHABLE WITH NOT LESS THAN ONE (1) YEAR AND NOT MORE THAN SIX (6) YEARS OF IMPRISONMENT WITHOUT PROBATION.— I now wish to focus though on the more practical yet equally tragic effects of the Court's ruling. It will simply cause unprecedented havoc in the 2010 general elections. I had previously alluded to how the decision would open the floodgates to petty mischiefs committed by political partisans in order to frustrate the clean and orderly exercise of the right of suffrage. Let me put those concerns into more concrete terms. Since the decision upholds Section 45 (j) of Rep. Act No. 8189, the violation of any provision of that law will now constitute an election offense punishable with not less than one (1) year and not more than six (6) years of imprisonment without probation. Among the people who would be subjected to this prison term, regardless of motivation or good faith, are all the clerks of court of the first level courts, the regional trial courts and the Sandiganbayan to comply with their monthly requirement to furnish the Election Officer of the city or municipality a certified list of persons who have become disqualified from voting in accordance with the law. The decision, for the first time in Philippine history, likewise allows for the imposition of a minimum prison term of one (1) year for the failure by a petitioner to set a notice of hearing in a judicial pleading. A similar fate befalls judges who fail to decide within periods prescribed under the law petitions for inclusion, exclusion or correction of names of voters. The voting public deserves to know and absorb what these newly-

minted election offenses are, for which voters, election officials, clerks of courts and judges could be imprisoned for a minimum of one year.

4. ID.; ID.; ID.; IT IS NOT EVEN CLEAR WHO EXACTLY MAY BE MADE LIABLE FOR FAILING TO PERFORM THE MANDATORY DUTY ENTRUSTED BY THE LAW; PROSECUTORS AND JUDGES WILL REMAIN AT A LOSS AS TO HOW EXACTLY TO PROSECUTE OR ADJUDGED THE SUPPOSED ELECTION OFFENSES SINCE THEY WERE OBVIOUSLY DESIGNED NOT AS PENAL ACTS WITH ATTENDING ELEMENTS.— It is not even clear who exactly may be made liable for failing to perform the mandatory duty entrusted by the law. For example, when the law mandates the COMELEC to perform a duty, and the COMELEC fails to do so, who may be criminally liable? Will it be only retired Supreme Court Associate Justice (now COMELEC Chairman) Jose Melo and the other Commissioners who will be subjected to the one-year prison term? Or would such imprisonment extend up to the field workers of that body who may have had a role in the relevant COMELEC failure? It is evident that despite the penalization of these acts under Section 45 (j), the public cannot be duly alerted as to what precise acts would make them liable for imprisonment. Even worse, prosecutors and judges will remain at a loss as to how exactly to prosecute or adjudge these supposed election offenses, since they were obviously designed not as penal acts with attending elements. Again, the due process clause was intended precisely to protect the people from being punished by vague laws with indeterminate standards. If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. It is doubtless that many of these enumerated acts are irregular and deserved to be penalized or corrected. Even without the penalization of these acts, they are clearly proscribed and subject to judicial correction. Then again, following Section 45 (j) in relation to Section 46 of the law, the minimum penalty for any of these acts is one (1) year imprisonment, with a high degree of possibility that the prison term will run up to six (6) years.

5. ID.; ID.; ID.; *PEOPLE VS. GATCHALIAN* CANNOT SERVE AS CRUTCH TO SUSTAIN THE CONSTITUTIONALITY OF SECTION 45(j).— It bears notice that the majority again invokes *People v. Gatchalian* as an example where the Court had upheld a provision of law in the since-defunct Minimum Wage Law that was similar to Section 45 (j). Yet as I noted in my earlier dissent, this Court's analysis of constitutional rights has become more sophisticated since *Gatchalian* was decided in 1958, when such bulwarks of modern constitutional law such as the exclusionary rule and the right to privacy were not yet adopted in this jurisdiction. *Gatchalian* cannot serve as crutch to sustain the constitutionality of Section 45 (j).

6. ID.; ID.; ID.; THE EFFECT OF NULLIFICATION UNDER THE VOID FOR VAGUENESS DOCTRINE WOULD BE LIMITED TO SECTION 45(j) OF REPUBLIC ACT NO. 8189 AND THE OTHER PROVISIONS WOULD REMAIN VALID UNTIL THE PROPER CHALLENGE IS RAISED BEFORE THE COURT.— The majority also cites other laws, such as The Cooperative Code, the Indigenous Peoples Rights Act, and the Retail Trade Liberalization Act which contains a similar provision to Section 45 (j) and notes that these provisions had not been declared unconstitutional. Of course, none of those specific provisions in those laws have been challenged before this Court; thus the majority's observation is inconsequential. If the majority is implying that the constitutionality of such provisions will be placed in jeopardy had the dissenting view been upheld, the negative implications of such a result are nothing compared to the resulting benefits if the constitutional error were corrected. Besides, as the Court recently held in ruling on the constitutionality of the legislative veto, the nullifying effect was confined to the provision on legislative veto only. In this case the same effect of the void for vagueness doctrine would be limited to Section 45 (j) of Rep. Act No. 8189 only. Those other provisions would remain valid until the proper challenge is raised before this Court.

7. ID.; ID.; ID.; THE NULLIFICATION OF SECTION 45(j) WILL NOT FRUSTRATE THE PROSECUTION OF LEGITIMATE ELECTION RELATED-OFFENSES WHICH SOCIETY SHOULD RIGHTLY FROWN UPON; SECTION 45 ALREADY PENALIZES THE WHOLE RANGE AND BREATH OF ACTS WHICH LEGITIMATELY SHOULD

BE SANCTIONED WITH IMPRISONMENT.— The Voter's Registration Act of 1996 almost matches the Revised Penal Code in the number of acts that are deemed criminal and subjected to imprisonment as penalty. Even worse, unlike the felonies under Revised Penal Code which are considered *mala in se*, the "crimes" under the Voter's Registration Act of 1996 are *malum prohibitum*. It does not matter why the applicant for registration forgot to attach the fourth I.D. picture required by the law. If for partisan political reasons, such applicant becomes criminally indicted for failing to attach such I.D. picture, the courts have no discretion to consider whatever good faith reasons the applicant had for such failure, to impose a penalty less than one (1) year imprisonment. Note that imprisonment is the indispensable penalty for committing an election offense. It cannot be substituted by a fine. The nullification of Section 45 (j) will not frustrate the prosecution of legitimate election-related offenses which society should rightly frown upon. Precisely, Section 45 already penalizes the whole range and breadth of acts which legitimately should be sanctioned with imprisonment.

8. ID.; ID.; ID.; WITH THE MAIN DECISION AND THE PRESENT RESOLUTION, IT IS NOW EFFECTIVELY MANDATORY, WITH PHYSICAL LIBERTY AT STAKE, FOR EVERY VOTER IN THE COUNTRY TO CONSULT HIS OR HER NEIGHBORHOOD LAWYER BEFORE UNDERTAKING THE NOW THE PERIL-RIDDEN RIGHT TO SUFFRAGE.— The ruinous consequences of the majority's ruling may yet remain under the radar, because election season is still more than a year away. But it does not take a Nostradamus to predict that come that time, the full extent of the problems wrought by this ruling will become manifest. A law that was originally designed to provide an orderly mechanism for the registration of voters has now been transformed by the majority to a viable method for the mass disenfranchisement and dissuasion of voters with the active threat of imprisonment for a minimum of one (1) year. *With the main decision and the present resolution, it is now effectively mandatory, with physical liberty at stake, for every voter in the country to consult his or her neighborhood election lawyer before undertaking the now peril-ridden constitutional right to suffrage.*

9. ID.; ID.; ID.; HOW CAN IT BE ARGUED THAT DEMOCRACY IS VIABLE WHEN THERE IS NO LEGAL MECHANISM TO ASSAIL THE VALIDITY OF THE LAW WHICH VAGUELY DEFINES A CRIMINAL OFFENSE TO THE CONFUSION OR IGNORANCE OF THE GENERAL PUBLIC, THE PROSECUTORS OR THE JUDGES.— Still, these practical implications should not deviate from the even more fundamental tragedy showcased by the majority's rulings — the lack of understanding of and respect for the due process clause of the Constitution. If left to stand the test of time, these rulings could readily become Exhibits "A" and "A-1" to support the proposition that democratic rights are unenforceable in the Philippines. After all, how can it be argued that a democracy is viable when there is no legal mechanism to assail the validity of a law which vaguely defines a criminal offense to the confusion or ignorance of the general public, the prosecutors or the judges. *Surely hundreds if not thousands of voters, election officers, and clerks of courts will commit violations of any of the one hundred or so potential criminal offenses now unleashed by the majority's final ruling. With the forthcoming transition of the Court as well as the close vote today, I hope that on that day certain when this matter comes up again for review of this Court, the present dissenters' view will win out in the end. That opportunity will easily arise once the first batch of cases relating to the 2010 elections arrives before the Court. Or more specifically, on appeal by the first Sandiganbayan Clerk of Court found guilty of for failing to comply with the monthly obligation, required since 1996, to furnish election officers concerned with the certified list of persons disqualified from registration as mandated in Section 27 of the Voter's Registration Act.* I dissent to the Resolution denying petitioners' motion for reconsideration.

LEONARDO-DE CASTRO, *J., concurring opinion*:

1. POLITICAL LAW; ELECTION LAW; REPUBLIC ACT NO. 8189 (VOTER'S REGISTRATION ACT); THE "ON-ITS-FACE" INVALIDATION OF THE PENAL PROVISIONS OF SECTION 45(j) OF REPUBLIC ACT NO. 8189 CANNOT BE COUNTENANCED UNDER THE FACTS OBTAINING IN CASE AT BAR.— The "on-its-face" invalidation of the

penal provision contained in Section 45 (j) of Republic Act No. 8189 under the facts obtaining in this case should not be countenanced, particularly where the petitioners are charged in separate informations of violating Section 10 (g) and (j) in relation to Section 45 (j) of the said statute, for their alleged willful and unlawful failure to fill up the required period of residence in the place of registration in their Voter Registration Record (VRR), which allegedly constituted material misrepresentation in their application for registration as new registrants in Precinct No. 11-A, Barangay District No. 3, Municipality of Burauen, Leyte, and for having allegedly declared under oath that they were not registered voters in another precinct when they were in fact registered voters in Barangay Bagong Lipunan ng Crame, Quezon City. Obviously, the acts/omissions charged against petitioners are germane to the declared policy of Republic Act No. 8189 and the evil it seeks to avoid. The said law leaves no room for doubt as to the significance of the factual details pertaining to the period of one's residence in his place of voter's registration and to his not being a registered voter in any other precinct.

2. ID.; ID.; ID.; ISSUE OF CONSTITUTIONALITY OF SECTION 45 (j) AS APPLIED IN RELATION TO SECTION 10 (g) AND (j) SHOULD BE RESOLVED AFTER TRIAL ON THE MERITS IN THE REGIONAL TRIAL COURT WHERE THE CASES ARE PENDING.— The issue of constitutionality of Section 45 (j) as applied in relation to Section 10 (g) and (j) should be resolved after trial on the merits in the Regional Trial Court where the cases are pending. Only then will the Court be in a position to determine whether or not the application of the law, in view of the facts as proved, suffers from constitutional infirmity. I agree with Justice Nazario that this Court should not indulge in the hypothetical or anticipatory application of Section 45 (j) of Republic Act No. 8189 in relation to the other provisions of the said law which are not in issue in this case as a means to resolve the issue of constitutionality of said Section 45 (j).

APPEARANCES OF COUNSEL

Jaime C. Opinion and *Avelino C. Agulto* for petitioners.
The Solicitor General for public respondent.
Constante C. Noriega, Jr. for private respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

For resolution is the Motion for Reconsideration filed by petitioner Spouses Carlos Romualdez and Erlinda Romualdez on 26 May 2008 from the Decision of this Court dated 30 April 2008, affirming the Resolutions, dated 11 June 2004 and 27 January 2005 of the COMELEC *En Banc*.

We find that petitioner has not raised substantially new grounds to justify the reconsideration sought. Instead, petitioner presents averments that are mere rehashes of arguments already considered by the Court. There is, thus, no cogent reason to warrant a reconsideration of this Court's Decision.

Similarly, we reject the contentions put forth by esteemed colleagues Mr. Justice Dante O. Tinga in his Dissent, dated 2 September 2008, which are also mere reiterations of his earlier dissent against the majority opinion. Mr. Justice Tinga's incessant assertions proceed from the wrong premise. To be clear, this Court did not intimate that penal statutes are beyond scrutiny. In our Decision, dated 30 April 2008, this Court emphasized the critical limitations by which a criminal statute may be challenged. We drew a lucid boundary between an "on-its-face" invalidation and an "as applied" challenge. Unfortunately, this is a distinction which Mr. Justice Tinga has refused to understand. Let it be underscored that "on-its-face" invalidation of penal statutes, as is sought to be done by petitioners in this case, may not be allowed. Thus, we said:

> The void-for-vagueness doctrine holds that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application. However, this Court has imposed certain limitations by which a criminal statute, as in the challenged law at bar, may be scrutinized. This Court has declared that facial invalidation or an "on-its-face" invalidation of criminal statutes is not appropriate. We have so enunciated in no uncertain terms in *Romualdez v. Sandiganbayan*, thus:
>
> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes

in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that 'one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.' As has been pointed out, 'vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant.'" (underscoring supplied)

"To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity." While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction. In *Yu Cong Eng v. Trinidad,* the Bookkeeping Act was found unconstitutional because it violated the equal protection clause, not because it was vague. *Adiong v. Comelec* decreed as void a mere Comelec Resolution, not a statute. Finally, *Santiago v. Comelec* held that a portion of RA 6735 was unconstitutional because of undue delegation of legislative powers, not because of vagueness.

Indeed, an "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness. In *Younger v. Harris,* this evil was aptly pointed out by the U.S. Supreme Court in these words:

"[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided."

For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a "manifestly strong

medicine" to be employed "sparingly and only as a last resort." In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged. (Emphasis supplied.)[1]

Neither does the listing by Mr. Justice Tinga of what he condemns as offenses under Republic Act No. 8189 convince this Court to overturn its ruling. What is crucial in this case is the rule set in our case books and precedents that a facial challenge is not the proper avenue to challenge the statute under consideration. In our Decision of 30 April 2008, we enunciated that "the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge."[2] On this matter, we held:

> An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189 — the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.[3]

In conclusion, I reiterate that the doctrine embodied in *Romualdez* and *Estrada* remains good law. The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. Under no case may ordinary penal statutes be subjected to a facial challenge. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes maybe hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of

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[1] *Romualdez v. COMELEC,* G.R. No. 167011, 30 April 2008.

[2] *Id*.

[3] *Id*.

the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State's ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State's power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him.

As structured, Section 45 enumerates acts deemed election offenses under Republic Act No. 8189. The evident intent of the legislature in including in the catena of election offenses the violation of any of the provisions of Republic Act No. 8189, is to subsume as punishable, not only the commission of proscribed acts, but also the omission of acts enjoined to be observed. On this score, the declared policy of Republic Act No. 8189 is illuminating. The law articulates the policy of the State to systematize the present method of registration in order to establish a clean, complete, permanent and updated list of voters.

In *People v. Gatchalian*, the Court had the occasion to rule on the validity of the provision of the Minimum Wage Law, which in like manner speaks of a willful violation of "any of the provisions of this Act." This Court upheld the assailed law, and in no uncertain terms declared that the provision is all-embracing, and the same must include what is enjoined in the Act which embodies the very fundamental purpose for which the law has been adopted.

Finally, as the records would show, petitioners managed to set up an intelligent defense against the informations filed below. By clearly enunciating their defenses against the accusations hurled at them, and denying their commission thereof, petitioners' allegation of vagueness must necessarily be rejected. Petitioners failed to overcome the heavy presumption of constitutionality in favor of the law. The constitutionality must prevail in the absence of substantial grounds for overthrowing the same.

The phraseology in Section 45(j) has been employed by Congress in a number of laws which have not been declared unconstitutional:

1) The Cooperative Code

Section 124(4) of Republic Act No. 6938 reads:

"Any violation of any provision of this Code for which no penalty is imposed shall be punished by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than One Thousand Pesos (₱1,000.00) or both at the discretion of the Court."

2) The Indigenous Peoples Rights Act

Section 72 of Republic Act No. 8371 reads in part:

"Any person who commits violation of any of the provisions of this Act, such as, but not limited to …"

3) The Retail Trade Liberalization Act

Section 12, Republic Act No. 8762, reads:

"Any person who would be found guilty of violation of any provisions of this Act shall be punished by imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of at least One Million (₱1,000,000.00) but not more than Twenty Million (₱20,000,000.00).

For reasons so stated, we deny the Motion for Reconsideration.

SO ORDERED.

Ynares-Santiago, Azcuna, Velasco, Jr., Reyes, and *Brion, JJ.,* concur.

Puno, C.J., Quisumbing, and *Nachura, JJ.*, join in J. Tinga's dissenting opinion.

Carpio, J., I dissent and I reiterate my dissent of April 30, 2008.

Austria-Martinez, J., I join Justices Tinga and Carpio in their existing opinion.

Corona, J., I certify that *J.* Corona concurred with the resolution of *J.* Nazario — RSP.

Carpio Morales, J., my position concurring with the dissent of Justices Carpio and Tinga remains.

Tinga, J., please see dissenting opinion.

Leonardo-de Castro, J., please see concurring opinion.

DISSENTING OPINION

TINGA, *J.*:

Republic Act No. 8189, or the Voter's Registration Act of 1996, has been converted by the Court into **the most draconian penal law in modern Philippine history.**

It is distressing that the majority continues to fail to recognize that the doctrine they have adopted — that the void for vagueness rule does not apply to penal laws — is of dubious origin. It did not originate from the majority opinion in *Estrada V. Desierto,*[1] which merely echoed the Separate Opinion of Justice Mendoza in the same case. As pointed out in my earlier Dissenting Opinion,[2] Justice Mendoza clarified his views in his Separate Opinion on the Resolution[3] denying the Motion for Reconsideration in Estrada.

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[1] 421 Phil. 290 (2001).

[2] See 553 SCRA 454-506 (*J.* Tinga, *dissenting*).

[3] Dated 2 January 2002. See Resolution, G.R. No. 148560, 29 January 2002, which may be found at http://www.supremecourt.gov.ph/resolutions/toc2002/..%5Cenbanc%5C2002%5CEjan%5C148560.htm. Therein, Justice Mendoza acknowledged, let it be clearly stated that, when we said that 'the doctrines of strict scrutiny, overbreadth and vagueness are analytical tools for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases [and therefore] cannot be made to do service when what is involved is a criminal statute.' **we did not mean to suggest that the doctrines do not apply to criminal statutes at all. They do although they do not justify a facial challenge, but only an as-applied challenge, to those statutes. . . Neither did we mean to suggest that the doctrines justify facial challenges only in free speech or First Amendment cases. To be sure, they also justify facial challenges in**

Justice Mendoza said it was not intended to suggest that the doctrine of vagueness does not apply to criminal statutes at all, that they did "although they do not justify a facial challenge, but only an as-applied challenge to those statutes."[4]

It was in *Romualdez v. Sandiganbayan*[5] that the notion that void for vagueness does not apply to penal cases was fleshed out as a view of the Court. Unfortunately, that decision mistakenly assumed that Justice Mendoza's earlier opinion was his final word on the matter as it failed to take stock of the crucial clarification laid down in his subsequent Separate Opinion. The Court through this case has the golden opportunity to rectify the error, but instead it perpetuated the unsound doctrine as pronounced in *Romualdez v. Sandiganbayan*. If this error, reflective as it is of a fundamental lack of understanding of what the due process clause means, is not corrected now, it may never be corrected at all. It will stand as one of the most tragic denigrations of the Philippine constitution. From whatever perspective, the void for vagueness challenge should apply to penal cases as much as it does to free speech cases.

Nowak and Rotunda express this point in clear and unambiguous terms:

> **The void for vagueness doctrine applies to all criminal laws, not merely those that regulate speech or other fundamental constitutional rights.** All such laws must provide fair notice to persons before making their activity criminal and also to restrict the authority of police officers to arrest persons for a violation of the law. To the extent that a threat is greater and its prohibition or regulation cannot be expressed more concretely, the Court will tolerate comparatively more vagueness.[6]

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cases under the Due Process and Equal Protection Clauses of the Constitution with respect to so-called 'fundamental rights'. . .". Emphasis supplied.

[4] *Id*. See also *Romualdez v. COMELEC* (J. Tinga, *dissenting*), *supra* note 2, at 467-468.

[5] G.R. No. 152259, 29 July 2004, 435 SCRA 371.

[6] J.E. Nowak & R. D. Rotunda, CONSTITUTIONAL LAW (7th ed., 2000), at 1158.

The *ponente* now begrudgingly concedes that the assailed decision "did not intimate that penal statutes are beyond scrutiny."[7] Yet that bare, ambiguous statement hardly addresses the constitutional flaws of the earlier ruling. In the next breath, the *ponente* asserts that the doctrine embodied in *Romualdez* "remains good law."[8] What is the so-called *Romualdez* doctrine? To quote from *Romualdez*: "**It is best to stress at the outset that the overbreadth and the vagueness doctrines have special application only to free-speech cases. . . they are not appropriate for testing the validity of penal statutes."**[9] The Court in *Romualdez* went as far as to observe that no penal laws in the Philippines have ever been invalidated on the ground of vagueness. If vagueness is not appropriate for testing the validity of penal statutes, it necessarily follows that a vague penal statute cannot be scrutinized or invalidated because it is vague. **Ergo, a vague penal statute is constitutional. That was the essence of *Romualdez*, as well as our earlier ruling herein.**

Oblivious to this basic truth about *Romualdez* that penal laws cannot be invalidated because they are unconstitutionally vague, the *ponente* claims to have "[drawn] a lucid boundary between an 'on-its-face' invalidation from an 'as applied' challenge," on the premise that a penal law may still be reviewed using an "as applied" challenge. I am accused of refusing to understand the distinction, even though I devoted several pages of my previous dissenting opinion contrasting those two challenges. Yet let us be clear. Nowhere in *Romualdez* was it asserted that a vague penal law may be struck down using an "as applied" challenge. Neither does the ponente make that crucial concession. The supposed distinction between "facial challenge" and "as applied" challenge is utilized to distract attention from the core holding that a penal law cannot be invalidated because it is vague.

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[7] Resolution, p. 2.

[8] *Id*., at 4.

[9] *Supra* note 5, at 381-382.

I now wish to focus though on the more practical yet equally tragic effects of the Court's ruling. It will simply cause unprecedented havoc in the 2010 general elections. I had previously alluded to how the decision would open the floodgates to petty mischiefs committed by political partisans in order to frustrate the clean and orderly exercise of the right of suffrage.[10] Let me put those concerns into more concrete terms.

Since the decision upholds Section 45 (j) of Rep. Act No. 8189, the violation of any provision of that law will now constitute an election offense punishable with not less than one (1) year and not more than six (6) years of imprisonment without probation. Among the people who would be subjected to this prison term, regardless of motivation or good faith, are all the clerks of court of the first level courts, the regional trial courts and the Sandiganbayan to comply with their monthly requirement to furnish the Election Officer of the city or municipality a certified list of persons who have become disqualified from voting in accordance with the law.[11] The decision, for the first time in Philippine history, likewise allows for the imposition of a minimum prison term of one (1) year for the failure by a petitioner to set a notice of hearing in a judicial pleading.[12] A similar fate befalls judges who fail to decide within periods prescribed under the law petitions for inclusion, exclusion or correction of names of voters.[13]

The voting public deserves to know and absorb what these newly-minted election offenses are, for which voters, election officials, clerks of courts and judges could be imprisoned for a minimum of one year. Let me enumerate these offenses **numbering 100 no less:**

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[10] *Romualdez v. COMELEC* (J. Tinga, *dissenting*), *supra* note 2, at 502-503, 505-506.

[11] See Section 27, Rep. Act No. 8189.

[12] See Section 32, Rep. Act No. 8189.

[13] See Section 32 (g), 34, 35, Rep. Act No. 8189.

1. The failure to maintain a permanent list of voters per precinct in each city or municipality (Sec. 4);
2. The failure of said permanent list to contain the names of all registered voters residing within the territorial jurisdiction of each precinct indicated by the precinct maps (Sec. 4);
3. The failure to attach the precinct-level list an addition deletion list (Sec. 4);
4. The failure of the election officer to display throughout the year the precinct maps in his office and in the bulletin board of the city or municipal hall (Sec. 4);
5. The change or alteration of the precinct assignment of a voter in the permanent list of voters (Sec. 4);
6. The transfer of the voter to another precinct without such voter's express written consent (Sec. 4);
7. The unreasonable withholding by the voter of consent to the transfer of precinct (Sec. 4);
8. The failure of the COMELEC to create original precincts only for the purpose of general registration (Sec. 5);
9. The failure by the COMELEC to introduce a permanent numbering of all precincts using Arabic numerals and a letter of the English alphabet (Sec. 4);
10. The establishment of a new precinct or alteration of a territory comprising an election precinct at the start of the election period (Sec. 4);
11. The splitting of an original precinct or merger of two or more original precincts without the redrawing the precinct map/s one hundred twenty (120) days before election day (Sec. 4);
12. The failure to provide every barangay with at least one (1) precinct (Sec. 4);

13. The provision of less than two hundred (200) voters for each precinct if the conditions under Section 6 (a) of the law have not been met (Sec. 4);

14. The establishment of precincts which do not comprise contiguous and compact territories. (Sec. 4);

15. The failure to post a notice of each case of alteration of precincts in a conspicuous place in the precinct, in the office of the election officer and in the city or municipal hall and by providing political parties and candidates a list of all the precincts at the start of the campaign period (Sec. 4);

16. The consolidation or merger of more than three (3) precincts (Sec. 4);

17. The merger of precincts within ninety (90) days before election day (Sec. 6);

18. The personal filing of application of registration of voters in a place other than the office of the election officer or at a time other than during regular office hours (Sec. 8);

19. The registration of voters during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election (Sec. 8);

20. The registration of a voter who is not at least eighteen (18) years of age, or one who has not resided in the Philippines for at least one (1) year, or one who has not resided in the place wherein they propose to vote, for at least six (6) months immediately preceding the election (Sec. 9);

21. The failure of the voter during registration to personally accomplish an application form for registration (Sec. 10);

22. The failure of the voter during registration to fill out three (3) copies of the application form before the Election Officer during a time other than office hours (Sec. 10);

23. The failure of the application to contain any the following data:

- Name, surname, middle name, and/or maternal surname;
- Sex;
- Date, and place of birth;
- Citizenship;
- Civil status, if married, name of spouse;
- Profession, occupation or work;
- Periods of residence in the Philippines and in the place of registration;
- Exact address with the name of the street and house number for location in the precinct maps maintained by the local office of the COMELEC, or in case there is none, a brief description of his residence, sitio, and barangay;
- A statement that the applicant possesses all the qualifications of a voter;
- A statement that the applicant is not a registered voter of any precinct; and
- Such information or data as may be required by the COMELEC (Sec. 10);

24. The failure of the application to contain exactly three (3) specimen signatures of the applicant (Sec. 10);
25. The failure of the application to contain clear and legible rolled prints of his left and right thumbprints (Sec. 10);
26. The failure of the application to attach exactly four (4) identification size copies of his latest photograph, or the expenditure of money by persons other than the COMELEC for such photographs (Sec. 10);
27. The failure of the Election Officer to inform the applicant of the qualifications and disqualifications prescribed by law for a voter, or to see to it that the accomplished application contains all the data therein required, or that

the applicant's specimen signatures, fingerprints, and photographs are properly affixed in all copies of the voter's application (Sec. 10);

28. The registration of any of the following voters disqualified from registering:

    - Any person who has been sentenced by final judgment to suffer imprisonment of not less than one (1) year, such disability not having been removed by plenary pardon or amnesty;
    - Any person who has been adjudged by final judgment by a competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the firearms laws or any crime against national security, unless restored to his full civil and political rights in accordance with law; and
    - Insane or incompetent persons declared as such by competent authority unless subsequently declared by proper authority that such person is no longer insane or incompetent (Sec. 11);

29. Any of the following failures relative to the application for transfer of registration records:

    - The failure observe notice and hearing, or to secure the approval of the Election Registration Board of such transfer;
    - The failure of the Election Officer of the voter's previous residence to transmit by registered mail the voter's registration record to the Election Officer of the voter's new residence (Sec. 12);

30. The failure of a voter who has changed his address in the same city or municipality to immediately notify the Election Officer in writing (Sec. 13);

31. The failure of the Election Board, upon the change of address of a voter in the same city or municipality, to transfer his registration record to the precinct book of voters of his new precinct and to notify the voter of his new precinct (Sec. 13);

32. The failure to report all changes of address to the office of the provincial election supervisor and the COMELEC in Manila (Sec. 13);

33. The registration of any illiterate person may register without the assistance of the Election Officer or any member of an accredited citizen's arms (Sec. 14);

34. The failure of the Election Officer to place the illiterate person registering to vote under oath, or to ask him the questions, and record the answers given in order to accomplish the application form in the presence of the majority of the members of the Board (Sec. 14);

35. The failure of the Election Officer or any member of an accredited citizen's arm to read the accomplished form aloud to the illiterate registrant he/she assisted and to ask if the information given is true and correct (Sec. 14);

36. The subscription by the illiterate applicant of the accomplished form by means other than a thumbmark or some other customary mark or outside the presence of the members of the Electoral Board (Sec. 14);

37. The failure of majority of the members of the Electoral Board to subscribe and attest to the form accomplished for the illiterate applicant, and the failure of the attestation to state any of the following:

    - The name of the person assisted;
    - The name of the Election Officer or the member of the accredited citizen's arm who assisted the applicant;

- The fact that the Election Officer placed the applicant under oath, that the Election Officer or the member of the accredited citizen's arm who assisted the applicant read the accomplished form to the person assisted, or that the person assisted affirmed its truth and accuracy, by placing his thumbmark or some other customary mark on the application in the presence of the Board (Sec. 14);

38. The preparation of the application for registration of a physically disabled person may be prepared by persons other than any relative within the fourth civil degree of consanguinity or affinity or by the Election Officer or any member of an accredited citizen's arm using the data supplied by the applicant (Sec. 14);

39. The failure to indicate the fact of illiteracy or disability in the application by an illiterate or registered voter (Sec. 14);

40. The establishment of Election Registration Boards in any city or municipality in a number that exceeds or is less than the number of election officers in the local government unit (Sec. 15);

41. The composition of the Election Registration Board by persons other than the Election Officer as chairman and as members, the public school official most senior in rank and the local civil registrar, or in this absence, the city or municipal treasurer (Sec. 15);

42. In case of disqualification of the Election Officer, the failure of the COMELEC to designate an acting Election Officer who shall serve as Chairman of the Election Registration Board, or in case of disqualification or non-availability of the Local Registrar or the Municipal Treasurer, a similar failure on the part of the COMELEC to designate any other appointive civil service official from the same locality as substitute (Sec. 15);

43. The appointment of Election Board members who are related to each other or to any incumbent city or municipal elective official within the fourth civil degree of consanguinity or affinity (Sec. 15);

44. The failure of each member of the Board to receive an honorarium to Two Hundred Pesos (P200.00) for each day of actual service rendered in the Board (Sec. 16);

45. The failure of the Election Officer, upon receipt of applications for registration, to set them for hearing, to provide notice thereof which shall be posted in the city or municipal bulletin board and in his office for at least one (1) week before the hearing, or to furnish copies thereof to the applicant concerned, the heads or representatives of political parties, and other accredited groups or organizations which actively participate in the electoral process in the city or municipality (Sec. 17);

46. The failure to notify in writing a registrant whose application is not seasonably objected that no objection was raised against his application and that he need not appear on the date set for the hearing of his application (See. 17);

47. The failure of the applicant to physically appear in all cases where objections against his application have been seasonably filed with the proper Election Registration Board, in order to rebut or refute evidence presented in opposition thereto (Sec. 17);

48. The failure to hear and process all applications for registration on a quarterly basis, or the failure of the Election Registration Board to meet and convene on the third Monday of April, July, October, and January of every calendar year, or on the next following working day if the designated days fail on a non-working holiday, except in an election year to conform with the one hundred twenty (120) days prohibitive period before election day (Sec. 17);

49. In cases where one day be sufficient for the processing of all accepted applications for registration, the failure of the Board to adjourn from day to day until all the applications shall have been processed (Sec. 17);

50. The institution of a challenge to an application for registration by means other than in writing, under oath attached to the application, with the grounds stated in such writing (Sec. 18);

51. The filing of the opposition contesting the registrant's application at a date later than the second Monday of the month in which the same is scheduled to be heard or processed by the Election Registration Board (Sec. 18);

52. The hearing of the challenge at a date other than the third Monday of the month or the rendition of the decision after the end of the month (Sec. 18);

53. The failure of the Election Officer to submit to the Board all applications for registration filed, together with the evidence received in connection therewith (Sec. 20);

54. Upon approval of the applications for registration, the failure of the Election Officer to assign a voters identification number and issue the corresponding identification card to each registered voter (Sec. 20);

55. The failure of the Election Registration Board to furnish to the disapproved applicant a certificate of disapproval stating the ground therefor (Sec. 20);

56. The failure of the Election Registration Board, within five (5) days from approval or disapproval of an application for registration, to post a notice in the bulletin board of the city or municipal hall and in the office of the Election Officer, stating the name and address of the applicant, the date of the application, and the action taken thereon (Sec. 21);

57. The failure of the Election Officer to furnish a copy of such notice personally, or by registered mail or special

delivery to the applicant and heads or representatives of registered political parties in the city or municipality (Sec. 21);

58. The failure of the Election Officer to compile the original copies of the approved applications for registration per precinct and arrange the same alphabetically according to surname, to preserve the book of voters and ensure its integrity (Sec. 22);

59. The failure to send second and third copies of the registration records to the provincial and national central files within three (3) days after the approval of the Board (Sec. 22);

60. The failure to maintain a provincial file consisting of the duplicate copies of all registration records in each precinct of every city and municipality in the province, to be in the custody of the Provincial Election Supervisor and compiled and arranged by precinct, by municipality and alphabetically by surnames of voters (Sec. 23);

61. The failure to use the corresponding book of voters in the provincial file during voting should the book of voters in the custody of the Election Officer be lost or destroyed at a time so close to election day that there is no time to reconstitute the same (Sec. 23);

62. The failure to maintain a national central file under the custody of the Commission in Manila consisting of the third copies of all approved voter registration records in each city or municipality, compiled by precinct in each city/municipality and arranged alphabetically by surname so as to make the file a replica of the book of voters in the possession of the Election Officer (Sec. 24);

63. The failure to prepare a national list of voters following the alphabetical arrangements of surnames of voters (Sec. 24);

64. The failure to keep a national file consisting of the computerized voters' list (CVL), both in print and in

diskette, submitted by the Election Officers in each city and municipality concerned, under the custody of the Commission in Manila (Sec. 24);

65. The failure of the computerized voters' list to make use of a single and uniform computer program that will have a detailed sorting capability to list voters alphabetically by the precincts where they vote, by the barangays, municipalities, cities or provinces where they reside and by their voters identification number (Sec. 24);

66. In case of loss or destruction of the voter's identification card, the issuance of a copy thereof to persons other than the registered voter himself (Sec. 25);

67. The failure of the COMELEC to adopt a design for the voter's identification card which shall be, as much as possible, tamper proof, and which provides the following: the name and address of the voter, his date of birth, sex, photograph, thumbmark, and the number of precinct where he is registered, the signature of the voter and the chairman of the Election Registration Board and the voter's identification number (Sec. 25);

68. The failure of the COMELEC to assign every registered voter a voter's identification number consisting of three parts, each separated by a dash, and each number correlative to the requirements set forth in Section 26 (a) (b) and (c) of the law (Sec. 26);

69. The failure of the Election Registration Board to deactivate the registration and remove the registration records of the following persons enumerated in Section 27 (a) (b) (c) (d) (e) and (f) from the corresponding precinct book of voters and place the same, properly marked and dated in indelible ink, in the inactive file after entering the cause or causes of deactivation (Sec. 27);

70. The failure of clerks of court for the Municipal/Municipal Circuit/Metropolitan/Regional Trial Courts and the Sandiganbayan to furnish the Election Officer of the city or municipality concerned at the end of each month

a certified list of persons who are disqualified with their addresses (Sec. 27);

71. The failure of the Election Officer to post in the bulletin board of his office a certified list of those persons whose registration were deactivated and the reasons therefor, and to furnish copies thereof to the local heads of political parties, the national central file, provincial file, and the voter concerned (Sec. 27);

72. The filing by any voter whose registration has been deactivated or a sworn application for reactivation of his registration in the form of an affidavit that fails to state that the grounds for the deactivation no longer exist; or at a point later than one hundred twenty (120) days before a regular election or ninety (90) days before a special election (Sec. 28);

73. The failure of the Election Officer to submit said application for reactivation of registration to the Election Registration Board for appropriate action, or in case the application is approved, the failure by the Election Officer to retrieve the registration record from the inactive file and include the same in the corresponding precinct book of voters (Sec. 28);

74. The failure to notify local heads or representatives of political parties on approved applications for reactivation of registration (Sec. 28);

75. The failure of the Board to cancel the registration records of those who have died as certified by the Local Civil Registrar, as well as the failure of said Registrar to submit each month a certified list of persons who died during the previous month to the Election Officer of the place where the deceased are registered, or in the absence of information concerning the place where the deceased is registered, to the Election Officer of the city or municipality of the deceased's residence as appearing in his death certificate (Sec. 29);

76. The failure of the Election Officer to post in the bulletin board of his office a list of those persons who died whose registrations were cancelled, and to furnish copies thereof to the local heads of the political parties, the national central file, and the provincial file (Sec. 29);

77. The failure of the Election Registration Board to prepare and post a certified list of voters ninety (90) days before a regular election and sixty (60) days before a special election and furnish copies thereof to the provincial, regional and national central files, as well as the failure to post within the same period copies of the certified list, along with a certified list of deactivated voters categorized by precinct per barangay in the office of the Election Officer and in the bulletin board of each city/municipal hall (Sec. 30);

78. The failure of the Election Registration Board to furnish two (2) certified copies for said certified list of voters, along with a certified list of deactivated voters to the Board of Election Inspectors for posting in the polling place and for their reference on election day (Sec. 30);

79. The failure of the Election Registration Board to notify within fifteen (15) days before the start of the campaign period all registered political parties and members of the Board of Election Inspectors to inspect and verify the completeness of the voter's registration records for each precinct compiled in the book of voters (Sec. 30);

80. The failure of the Election Registration Board to seal the book of voters in the presence of the Board of Election Inspectors and party representatives after the latter have verified and certified the completeness of the voters' registration records in the precinct book of voters at the start of the campaign period, as well as the failure of said Board to take custody of the said book until their distribution to the Board of Election Inspectors on election day (Sec. 31);

81. The failure of the Election Officer to deliver the sealed precinct book of voters to the chairman of the Board of Election Inspectors when the latter secures its official ballots and other paraphernalia for election day (Sec. 31);

82. The filing of a judicial petition for inclusion, exclusion or correction of names of voters outside of office hours; or the failure of the petitioner to serve a notice of the place, date and time of the hearing of the petition upon the members of the Board and the challenged voter upon filing of the petition; or the service of such notice through means other than by sending a copy thereof by personal delivery or by registered mail; and the failure of the petition to refer to only one (1) precinct and implead the Election Registration Board as respondents (Sec. 32);

83. The rendition by the judge of a decision on the petition for inclusion, exclusion or correction of names of voters that is not based on the evidence presented or rendered upon a stipulation of facts, or one that is not decided within ten (10) days from its filing; and in case of appeals to the Regional Trial Court, where the RTC judge fails to decide the appeal within ten (10) days from receipt of the appeal (Sec. 32);

84. In all cases of inclusion and exclusion of voters, the filing of appeal of decisions of the Municipal or Metropolitan Trial Courts to the Regional Trial Courts after five (5) days from receipt of notice thereof and the rendition of a decision by the RTC judge on such appeal beyond ten (10) days from the time it is received, or the entertainment by said RTC judge of a motion for reconsideration (Sec. 33);

85. The filing of a petition for inclusion of voters in the list within one hundred five (105) days prior to a regular election or seventy-five (75) days prior to a special election, as well as failure of said petition to be supported by a certificate of disapproval of his application and

proof of service of notice of his petition upon the Election Registration Board (Sec. 34);

86. The failure of the court to resolve a petition for inclusion of voters within fifteen (115) days after its filing. If the decision is for the inclusion of voters in the permanent list of voters, the failure of the Election Registration Board to place the application for registration previously disapproved in the corresponding book of voters and indicate in the application for registration the date of the order of inclusion and the court which issued the same (Sec. 34);

87. The filing by a non-registered voter who is neither a representative of a political party or an Election Officer of a sworn petition for the exclusion of a voter from the permanent list of voters, or the filing of such petition within one hundred (100) days prior to a regular election or sixty-five (65) days before a special election, as well as the failure to attach to such petition proof of notice to the Board and to the challenged voter (Sec. 35);

88. The failure of the trial court judge to decide within ten (10) days from its filing the petition for the exclusion of a voter from the list of voters (Sec. 35);

89. The failure, upon receipt by the Election Registration Board of a final decision for the exclusion of a voter from the list of voters, to remove the voter's registration record from the corresponding book of voters, enter the order of exclusion therein, or thereafter place the record in the inactive file (Sec. 35);

90. The failure of the Election Officer to file exclusion proceedings when necessary in order to preserve the integrity of the permanent list of voters, or to verify the list of the registered voters of any precinct by regular mail or house to house canvass (Sec. 36);

91. In the case of a registered voter inadvertently excluded from the voter's list or registered with an erroneous or

misspelled name who files a petition for an order directing that his name be entered or corrected in the list, the failure to attach to the petition a certified copy of his registration record or identification card or the entry of his name in the certified list of voters used in the preceding election, as well as proof that his application was denied or not acted upon by the Board and that he has served notice to the Board (Sec. 36);

92. The failure of the COMELEC, upon verified petition of any voter or election officer or duly registered political party, and after notice and hearing, to annul any book of voters that is not prepared in accordance with the provisions of this Act or was prepared through fraud, bribery, forgery, impersonation, intimidation, force or any similar irregularity, or which contains data that are statistically improbable, or for the undertaking of such annulment within ninety (90) days before an election (Sec. 39);

93. The failure of the COMELEC to reconstitute all registration records which have been lost or destroyed by using the corresponding copies of the provincial or national central files (Sec. 40);

94. The failure of the Election Officer to immediately report to the COMELEC any case of loss or destruction of registration record in his custody (Sec. 40);

95. The failure to leave all registration records/computerized voters list in the possession of the Election officer, the Provincial Election Supervisor, and the Commission in Manila open to examination by the public during regular office hours for legitimate inquiries on election related matters, free from any charge or access fee (Sec. 41);

96. The denial of the right of duly authorized representative of a registered political party or of a bona fide candidate to inspect and/or copy at their expense the accountable registration forms and/or the list of registered voters in the precincts constituting the constituency of the bona

fide candidate or at which the political party is fielding candidates (Sec. 42);

97. The failure of the COMELEC to prepare a permanent and computerized list arranged by precinct, city or municipality, province and region, as well as another list consisting of the names of the voters, arranged alphabetically according to surnames (Sec. 43);

98. The failure of the Election Registration Board to certify that the computer print-outs of the list of voters are official documents and shall be used for voting and other election related purposes as well as for legitimate research needs (Sec. 43);

99. The printing of official ballots by the COMELEC not based on total number of voters in the permanent list (Sec. 43);

100. The holding of office by an Election Officer in a particular city or municipality for more than four (4) years (Sec. 44);

Note that in many instances, it is not even clear who exactly may be made liable for failing to perform the mandatory duty entrusted by the law. For example, when the law mandates the COMELEC to perform a duty, and the COMELEC fails to do so, who may be criminally liable? Will it be only retired Supreme Court Associate Justice (now COMELEC Chairman) Jose Melo and the other Commissioners who will be subjected to the one-year prison term? Or would such imprisonment extend up to the field workers of that body who may have had a role in the relevant COMELEC failure?

It is evident that despite the penalization of these acts under Section 45 (j), the public cannot be duly alerted as to what precise acts would make them liable for imprisonment. Even worse, prosecutors and judges will remain at a loss as to how exactly to prosecute or adjudge these supposed election offenses, since they were obviously designed not as penal acts with attending elements. Again, the due process clause was intended precisely to protect the people from being punished by vague laws with

indeterminate standards. If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.[14]

It is doubtless that many of these enumerated acts are irregular and deserved to be penalized or corrected. Even without the penalization of these acts, they are clearly proscribed and subject to judicial correction. Then again, following Section 45 (j) in relation to Section 46 of the law, the minimum penalty for any of these acts is one (1) year imprisonment, with a high degree of possibility that the prison term will run up to six (6) years.

It bears notice that the majority again invokes *People v. Gatchalian*[15] as an example where the Court had upheld a provision of law in the since-defunct Minimum Wage Law that was similar to Section 45 (j). Yet as I noted in my earlier dissent, this Court's analysis of constitutional rights has become more sophisticated since *Gatchalian* was decided in 1958, when such bulwarks of modern constitutional law such as the exclusionary rule and the right to privacy were not yet adopted in this jurisdiction. *Gatchalian* cannot serve as crutch to sustain the constitutionality of Section 45 (j).

The majority also cites other laws, such as The Cooperative Code, the Indigenous Peoples Rights Act, and the Retail Trade Liberalization Act which contains a similar provision to Section 45 (j) and notes that these provisions had not been declared unconstitutional. Of course, none of those specific provisions in those laws have been challenged before this Court; thus the majority's observation is inconsequential. If the majority is implying that the constitutionality of such provisions will be placed in jeopardy had the dissenting view been upheld, the negative implications of such a result are nothing compared to

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[14] *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, (1972).

[15] 104 Phil. 664 (1958).

the resulting benefits if the constitutional error were corrected. Besides, as the Court recently held in ruling on the constitutionality of the legislative veto, the nullifying effect was confined to the provision on legislative veto only.[16] In this case the same effect of the void for vagueness doctrine would be limited to Section 45 (j) of Rep. Act No. 8189 only. Those other provisions would remain valid until the proper challenge is raised before this Court.

The Voter's Registration Act of 1996 almost matches the Revised Penal Code in the number of acts that are deemed criminal and subjected to imprisonment as penalty. Even worse, unlike the felonies under Revised Penal Code which are considered *mala in se*, the "crimes" under the Voter's Registration Act of 1996 are *malum prohibitum*. It does not matter why the applicant for registration forgot to attach the fourth I.D. picture required by the law. If for partisan political reasons, such applicant becomes criminally indicted for failing to attach such I.D. picture, the courts have no discretion to consider whatever good faith reasons the applicant had for such failure, to impose a penalty less than one (1) year imprisonment. Note that imprisonment is the indispensable penalty for committing an election offense. It cannot be substituted by a fine.

The nullification of Section 45 (j) will not frustrate the prosecution of legitimate election-related offenses which society should rightly frown upon. Precisely, Section 45 already penalizes the whole range and breadth of acts which legitimately should be sanctioned with imprisonment.

Sec. 45. *Election Offenses*. — The following shall be considered election offenses under this Act:

(a) to deliver, hand over, entrust or give, directly or indirectly, his voter's identification card to another in consideration of money or other benefit of promise; or take or accept such voter's identification card, directly or indirectly, by giving or causing the giving or money or other benefit or making or causing the making of a promise therefore;

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[16] *ABAKADA v. Purisima*, G.R. No. 166715, 14 August 2008.

(b) to fail, without cause, to post or give any of the notices or to make any of the reports re-acquired under this Act;

(c) to issue or cause the issuance of a voter's identification number or to cancel or cause the cancellation thereof in violation of the provisions of this Act; or to refuse the issuance of registered voters their voter's identification card;

(d) to accept an appointment, to assume office and to actually serve as a member of the Election Registration Board although ineligible thereto, to appoint such ineligible person knowing him to be ineligible;

(e) to interfere with, impede, abscond for purpose of gain or to prevent the installation or use of computers and devices and the processing, storage, generation, and transmission of registration data or information;

(f) to gain, cause access to use, alter, destroy, or disclose any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified;

(g) failure to provide certified voters and deactivated voters list to candidates and heads of representatives of political parties upon written request as provided in Section 30 hereof;

(h) failure to include the approved application form for registration of a qualified voter in the book of voters of a particular precinct or the omission of the name of a duly registered voter in the certified list of voters of the precinct where he is duly, registered resulting in his failure to cast his vote during an election, plebiscite, referendum, initiative and/or recall. The presence of the form or name in the book of voters or certified list of voters in precincts other than where he is duly registered shall not be an excuse hereof;

(i) the posting of a list of voters outside or at the door of a precinct on the day of an election, plebiscite, referendum, initiative and/or recall, and which list is different in contents from the certified list of voters being used by the Board of Election Inspectors. . .

The ruinous consequences of the majority's ruling may yet remain under the radar, because election season is still more than a year away. But it does not take a Nostradamus to predict that come that time, the full extent of the problems wrought by

this ruling will become manifest. A law that was originally designed to provide an orderly mechanism for the registration of voters has now been transformed by the majority to a viable method for the mass disenfranchisement and dissuasion of voters with the active threat of imprisonment for a minimum of one (1) year. **With the main decision and the present resolution, it is now effectively mandatory, with physical liberty at stake, for every voter in the country to consult his or her neighborhood election lawyer before undertaking the now peril-ridden constitutional right to suffrage.**

Still, these practical implications should not deviate from the even more fundamental tragedy showcased by the majority's rulings — the lack of understanding of and respect for the due process clause of the Constitution. If left to stand the test of time, these rulings could readily become Exhibits "A" and "A-1" to support the proposition that democratic rights are unenforceable in the Philippines. After all, how can it be argued that a democracy is viable when there is no legal mechanism to assail the validity of a law which vaguely defines a criminal offense to the confusion or ignorance of the general public, the prosecutors or the judges.

Surely hundreds if not thousands of voters, election officers, and clerks of courts will commit violations of any of the one hundred or so potential criminal offenses now unleashed by the majority's final ruling. With the forthcoming transition of the Court as well as the close vote today, I hope that on that day certain when this matter comes up again for review of this Court, the present dissenters' view will win out in the end. That opportunity will easily arise once the first batch of cases relating to the 2010 elections arrives before the Court. Or more specifically, on appeal by the first Sandiganbayan Clerk of Court found guilty of for failing to comply with the monthly obligation, required since 1996, to furnish election officers concerned with the certified list of persons disqualified from registration as mandated in Section 27[17] of the Voter's Registration Act.

[17] See note 9.

I dissent to the Resolution denying petitioners' motion for reconsideration.

SEPARATE OPINIONS

LEONARDO-DE CASTRO, *J.*, *concurring*:

I concur with the Resolution penned by the Honorable Justice Minita V. Chico-Nazario to deny the motion for reconsideration of the Decision promulgated on April 20, 2008.

The "on-its-face" invalidation of the penal provision contained in Section 45 (j) of Republic Act No. 8189 under the facts obtaining in this case should not be countenanced, particularly where the petitioners are charged in separate informations of violating Section 10 (g) and (j) in relation to Section 45 (j) of the said statute, for their alleged willful and unlawful failure to fill up the required period of residence in the place of registration in their Voter Registration Record (VRR), which allegedly constituted material misrepresentation in their application for registration as new registrants in Precinct No. 11-A, Barangay District No. 3, Municipality of Burauen, Leyte, and for having allegedly declared under oath that they were not registered voters in another precinct when they were in fact registered voters in Barangay Bagong Lipunan ng Crame, Quezon City. Obviously, the acts/omissions charged against petitioners are germane to the declared policy of Republic Act No. 8189 and the evil it seeks to avoid. The said law leaves no room for doubt as to the significance of the factual details pertaining to the period of one's residence in his place of voter's registration and to his not being a registered voter in any other precinct.

The issue of constitutionality of Section 45 (j) as applied in relation to Section 10 (g) and (j) should be resolved after trial on the merits in the Regional Trial Court where the cases are pending. Only then will the Court be in a position to determine whether or not the application of the law, in view of the facts as proved, suffers from constitutional infirmity.

I agree with Justice Nazario that this Court should not indulge in the hypothetical or anticipatory application of Section 45 (j) of Republic Act No. 8189 in relation to the other provisions of the said law which are not in issue in this case as a means to resolve the issue of constitutionality of said Section 45 (j).

Accordingly, I reiterate my vote to deny the petition and consequently, I vote to deny the instant motion for reconsideration.

THIRD DIVISION

[G.R. No. 168537. December 11, 2008]

DAMIAN AKLAN, JUANITO AMIDO, REYNALDO BATICA, RAMIL BAUTISTA, WELARD BAUTISTA, MAMERTO BRIGOLI, ELMER CABOTEJA, JOEL CAMMAYO, WELFREDO CARIO, RODOLFO CINCO, ARWEN DABLO, RUBEN DE CASTRO, ROMEO DEL ROSARIO, RODERICK DELA CRUZ, ALEX DELA VEGA, JOAN ERICO DUMALAGAN, JULITO DURIAN, JOSELITO DUYANEN, REX FARNACIO, ROLANDO FELIZARDO, EFREN FERNANDEZ, BERNARDO GALLOGO, EDUARDO GARCIA, REX IGNACIO, DANIEL JAMISOLA, NOEL JANER, RAQUEL JANER, ROWAN JANER, CONSORCIO LIÑAN, BERNARD MACARAEG, DARIO MACARAEG, JESUS MACARAEG, EDGARDO MAHAGUAY, IRENEO ODIAMAR, ALEXIS OLIVAR, ARNEL OLIVAR, EDUARDO PEREMNE, ALAN QUILES, JOSEPH QUILES, RHONNEL RODIL, RONALDO SALVADOR, RAMIL SANTIAGO, FRANCIS SUPRINO, REXES SUPRINO, RODRIGO SUPRINO, RONALD SUPRINO, EDUARDO TIONGSON, *petitioners, vs.* **SAN MIGUEL CORPORATION, BMA PHILASIA, INC., and ARLENE EUSEBIO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; A FINDING THAT A CONTRACTOR IS A "LABOR ONLY" CONTRACTOR, AS OPPOSED TO PERMISSIBLE JOB CONTRACTING, IS EQUIVALENT TO DECLARING THAT THERE IS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PRINCIPAL AND THE EMPLOYEES OF THE SUPPOSED CONTRACTOR, AND THE "LABOR-ONLY" CONTRACTOR IS CONSIDERED AS A MERE AGENT OF THE PRINCIPAL, THE REAL EMPLOYER.— *A finding that a contractor is a "labor-only" contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.* Both the Labor Arbiter and the NLRC found that the employment contracts of petitioners duly prove that an employer-employee relationship existed between petitioners and BMA. We hasten to add that the existence of an employer-employee relationship is ultimately a question of fact and the findings by the Labor Arbiter and the NLRC on that score shall be accorded not only respect but even finality when supported by ample evidence. In its ruling, the NLRC considered the following elements to determine the existence of an employer-employee relationship: (1) the selection and engagement of the workers; (2) power of dismissal; (3) the payment of wages by whatever means; and (4) the power to control the worker's conduct. All four elements were found by the NLRC to be vested in BMA. This NLRC finding was affirmed by the CA: . . . It is the BMA which actually conducts the hauling, storage, handling, transporting, and delivery operations of SMC's products pursuant to their warehousing and Delivery Agreement. BMA itself hires and supervises its own workers to carry out the aforesaid business activities. *Apart from the fact that it was BMA which paid for the wages and benefits, as well as SSS contributions of petitioners, it was also the management of BMA which directly supervised and imposed disciplinary actions on the basis of established rules and regulations of the company.* The documentary evidence consisting of numerous memos throughout the period of petitioners' employment leaves no

doubt in the mind of this Court that petitioners are only too aware of who is their true employer. Petitioners received daily instructions on their tasks form BMA management, particularly, private respondent Arlene C. Eusebio, and whenever they committed lapses or offenses in connection with their work, it was to said officer that they submitted compliance such as written explanations, and brought matters connected with their specific responsibilities. The employer-employee relationship between BMA and petitioners is not tarnished by the absence of registration with DOLE as an independent job contractor on the part of BMA. The absence of registration only gives rise to the presumption that the contractor is engaged in labor-only contracting, a presumption that respondent BMA ably refuted.

2. ID.; ID.; NO GRAVE ABUSE OF DISCRETION CAN BE ASCRIBED TO THE COURT OF APPEALS WHEN IT RULED THAT ILLEGAL DISMISSAL WAS ABSENT.— We find no grave abuse of discretion in the CA observation that respondent BMA is the true employer of petitioners who should be held directly liable for their claims. Likewise, no grave abuse of discretion can be ascribed to the CA when it ruled that illegal dismissal was absent. The records fully disclose that petitioners Caboteja, Dumalagan, and Salvador were separated from their jobs for just and valid causes. Caboteja was cited for violation of company rules and regulations and disrespectful conduct. Dumalagan and Salvador were investigated for failure to perform duties and responsibilities. After their explanations were found unacceptable, they were accordingly dismissed. As for the other petitioners, they contend that they were illegally dismissed when respondent BMA barred them from entering the work premises and from performing their work. Both the NLRC and the CA found that petitioners failed to substantiate this contention. Rather, what was shown in the records was that they simply stopped reporting for work starting October 18, 2001 when they staged a picket. The CA observation along this line is worth restating: . . . petitioners failed to substantiate their claim that they had been prevented from entering the work premises after staging a "picket" on October 18, 2001 to further press their demands for payment of their money claims. At this time, the labor standards case was already pending with the DOLE District Office and petitioners could have availed of said proceedings with the intervention of DOLE

officials. Instead, however, they resorted to an illegal stoppage of work that paralyzed the business operations of BMA. As aptly noted by the NLRC, there is simply no probable or logical reason for private respondent BMA to simultaneously dismiss its workers that will disrupt business operations at the warehouse. *Under the factual circumstances, it clearly appears that petitioners refused to report back to their work in order to force their employer BMA to give in to their immediate demand for the salary differentials and unpaid benefits subject of their complaint with the DOLE*. Hence, BMA cannot be held liable for illegal dismissal. While it is true that the defense of abandonment may not be given credence or is negated by the immediate filing of illegal dismissal cases by the affected employees, *records clearly reveal that as of October 18, 2001, petitioners without justifiable cause failed and refused to report back to their work.* Their claim of having been prevented from entering the work premises was not given due weight for no particulars was even alleged by them in their report back to their jobs, who prevented their entry to the company premises and details as to what steps they took to bring the matter to the attention of DOLE District Office wherein their complaint for labor standards violation was already pending.

3. ID.; ID.; THE LANGUAGE EMPLOYED BY THE SUBJECT QUITCLAIMS AND RELEASES INDICATES IN NO UNCERTAIN TERMS THAT PETITIONERS VOLUNTARILY AND FREELY ACKNOWLEDGE RECEIPT OF FULL SATISFACTION OF ALL CLAIMS AGAINST RESPONDENTS WHICH EFFECTIVELY BARRED THEM FROM QUESTIONING THEIR DISMISSAL.— Eleven of petitioners contend that their quitclaims should not be considered as a bar to their complaint for illegal dismissal because that complaint was not yet in existence at the time the quitclaims were executed. That the quitclaims were executed voluntarily is not denied by petitioners. They, however, contend that the quitclaims should be construed as limited to the money claims in connection with the first labor standards complaint they had filed before the DOLE district office. *Unless there is a showing that the employee signed involuntarily or under duress, quitclaims and releases are upheld by this Court as the law between the parties*. If the agreement was voluntarily entered into by the employee, with full understanding of what he was doing,

and represents a reasonable settlement of the claims of the employee, it is binding on the parties and may not be later disowned simply because of a change of mind. In the case under review, the quitclaims and releases signed by petitioners stated: That for and in consideration of the sum of FIFTY-THREE THOUSAND PESOS (₱53,000.00) in settlement of my/our claim/s as financial assistance and/or gratuitously given by my/our employer receipt of which is hereby acknowledge to my/our complete and full satisfaction, I/we hereby release and discharge the above respondent and/or its officers from any and all claims by way of wages, overtime pay, differential pay, or otherwise as may be due me/us incident to my/our past employment with said establishment. *I/we hereby state further that I/we have no more claim, right or action of whatsoever nature whether past, present or contingent against the said respondent and/or its officers.* As correctly observed by the NLRC, the language employed by the above quitclaims and releases indicates in no uncertain terms that petitioners voluntarily and freely acknowledged receipt of full satisfaction of all claims against respondents. Thus, the quitclaims effectively barred petitioners from questioning their dismissal. Social justice must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life. While labor should be protected at all times, this protection must not be at the expense of capital.

APPEARANCES OF COUNSEL

Pro Labor legal assistance Center for petitioners.

Angara Abello Concepcion Regala & Cruz for San Miguel Corp.

Piñera Marcella Romero & Associates for BMA & Eusebio.

D E C I S I O N

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

WE tackle in this labor case the dichotomy between impermissible labor-only contracting and legitimate job contracting.

This is a review on *certiorari* of the Decision[1] of the Court of Appeals (CA) upholding that of the National Labor Relations Commission (NLRC), finding the dismissal of petitioners justified.

The Facts

Respondent BMA Philasia, Inc. (BMA) is a domestic corporation engaged in the business of transporting and hauling of cargoes, goods, and commodities of all kinds. Respondent Arlene Eusebio is the president of BMA.

Petitioners, numbering forty-seven (47) in all, are the former employees of respondent BMA at respondent San Miguel Corporation's (SMC) warehouse in Pasig City. They were hired under fixed-term contracts beginning October 1999.

On July 31, 2001, a number of petitioners went to the Department of Labor and Employment (DOLE) District Office to file a complaint against BMA and Eusebio for underpayment of wages and non-payment of premium pay for rest day, 13th month pay, and service incentive leave pay.[2]

On August 14, 2001, petitioner Elmer Caboteja was charged with insubordination and disrespect to superior, failure to properly perform his job assignment, and unauthorized change of schedule. He was directed to submit his written explanation within forty-eight (48) hours. On August 17, 2001, Caboteja was terminated for the offenses of disregard of company rules and regulations and rude attitude to supervisors. On August 27, 2001, he filed a complaint for illegal dismissal against BMA.[3]

On various dates thereafter, BMA agreed to a settlement with some of the complainants in the case[4] for underpayment

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[1] *Rollo*, pp. 56-74. Promulgated on April 15, 2005. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring.

[2] Docketed as SED-0107-15-061.

[3] Docketed as NLRC NCR North Sector Case No. 08-04522-2001.

[4] See note 2.

of wages.[5] Eleven of the present petitioners executed quitclaims and releases in favor of BMA and Eusebio in the presence of DOLE district officers. BMA refused to settle the claim of other complainants.

On September 13, 2001, petitioners Joan Erico Dumalagan and Ronaldo Salvador were also terminated for failure to perform their job responsibilities. On September 17, 2001, Dumalagan and Salvador filed complaints for illegal dismissal against BMA.[6]

On October 18, 2001, petitioners held a picket at the warehouse premises to protest BMA's refusal to pay the claim for underpayment of the rest of the workers. This picket disrupted the business operations of private respondents, prompting BMA to terminate their services. Subsequently, petitioners filed separate complaints against BMA, Eusebio, and SMC for illegal dismissal.[7] All the complaints for illegal dismissal were consolidated.

Petitioners alleged that they were illegally dismissed after filing a complaint for underpayment of wages and non-payment of benefits before the DOLE; they were terminated after staging

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[5] Ronaldo Salvador, Alexis Olivar, Arnel Olivar, Joan Dumalagan, Elmer Caboteja, Joel Moncog, Julito Durian, Danilo Gamban, Consorcio Liñan, Juanito Amido, Ramil Santiago, Wilfredo Damian, and Joselito Duyanen.

[6] Docketed as NLRC NCR North Sector Case No. 09-04941-2001.

[7] Daniel J. Jamisola, Joseph N. Quiles, Rodolfo R. Cinco, Eduardo B. Garcia, Rolando Felizardo, Romeo Del Rosario, Jesus Macaraeg, Alan Quiles, Julito Durian, Welard Bautista, Efren Fernandez, Ronaldo Suprino, Rodrigo Suprino, and Noel Janer, November 9, 2001 (NLRC NCR North Sector Case No. 00-11-05923-2001); Reynaldo Batica, Rhonnel Rodil, Eduardo Peremne, Mamerto Brigoli, Ireneo Odiamar, Ramil Santiago, Rex Ignacio, Edgardo Mahaguay, Alexis Olivar, Rexes Suprino, and Wilfredo Cario, November 13, 2001 (NLRC NCR North Sector Case No. 00-11-05969-2001); Eduardo Tiongson, Joel Cammayo, Arwen Dablo, Alex Dela Vega, Consorcio Liñan, Arnel Olivar, and Bernardo Gallogo, November 21, 2001 (NLRC NCR North Sector Case No. 11-06120-2001); Joselito M. Duyanan, January 17, 2002 (NLRC NCR North Sector Case No. 00-01-00450-2002); Bernard G. Macaraeg, February 5, 2002 (NLRC NCR North Sector Case No. 02-00934-2002); Rex Farnacio and Ruben De Castro, December 3, 2001 (NLRC NCR North Sector Case No. 12-06288-2001); and Rowan Janer and Raquel Janer, December 4, 2001 (NLRC NCR North Sector Case No. 12-063200-2001).

a peaceful picket to protest the non-payment of their claims. According to them, BMA is a labor-only contractor. SMC was not only the owner of the warehouse and equipment used by BMA, it was their true employer. The manner and means by which they performed their work were controlled by SMC through its Sales Logistic Coordinator who was overseeing their performance everyday.

Private respondents BMA and Eusebio countered that petitioners Caboteja, Dumalagan, and Salvador were validly and justly dismissed. They were among the eleven who already signed quitclaims and releases before the DOLE district office after receiving an amount in settlement of their claims. As for the rest of petitioners (36 complainants), there was no illegal dismissal to speak of. Said employees simultaneously did not go back to work for no apparent reason on October 18, 2001.

Private respondent SMC maintained that it had no employer-employee relationship with petitioners who were hired and supervised exclusively by BMA pursuant to a warehousing and delivery agreement in consideration of a fixed monthly fee. SMC argued that BMA is a legitimate and independent contractor, duly registered with the Securities and Exchange Commission (SEC) as a separate and distinct corporation with substantial capitalization, investment, equipment, and tools. It submitted documentary evidence proving that BMA engaged the services of petitioners, paid for their wages and benefits, and exercised exclusive control and supervision over them.

SMC showed that under their contract, BMA provided delivery trucks, drivers, and helpers in the storage and distribution of SMC products. On a day-to-day basis, after the routes were made by SMC salesmen, they would book the orders they obtained. In turn, BMA's Schedular Planner, detailed at the Pasig Warehouse, downloaded these booked orders from the computer and processed the necessary documents to be forwarded to the Warehouse Checker, also an employee of BMA. SMC contended that petitioners were dismissed by BMA for staging a two-hour strike without complying with the mandatory requirements for a valid strike. As a result, BMA had to come up with ways and means in order to avoid the disruption of delivery operations.

Labor Arbiter and NLRC Dispositions

After due hearings, Labor Arbiter Veneranda C. Guerrero found respondent BMA liable for illegal dismissal and ordered the reinstatement of petitioners. She ruled that the evidence presented duly established that BMA was a legitimate independent contractor and the actual employer of petitioners. Its failure, however, to comply with the registration and reportorial requirements of the DOLE rendered SMC, its principal, directly liable to the claims of petitioners.[8] Thus, BMA and SMC were found jointly and severally liable for the payment of petitioners' backwages and money claims. The dispositive part of the Arbiter ruling runs in this wise:

WHEREFORE, all the foregoing considered, judgment is hereby rendered finding respondent BMA Philasia, Inc., liable for illegal dismissal. *Accordingly, is it hereby ordered to reinstate all of the complainants to their previous positions, and to pay jointly and severally with respondent San Miguel the complainants' backwages reckoned from the time of their illegal dismissal up to their actual/ payroll reinstatement*, the aggregate amount of which as of this date amounts to SEVEN MILLION FIVE HUNDRED EIGHTEEN THOUSAND TWO HUNDRED FIFTY-TWO AND 89/100 PESOS (₱7,518,252.89). In addition *respondents are solidarily held liable to pay the complainants'* Daniel Jamisola, Rodolfo Cinco, Eduardo Garcia, Dario Macaraeg, Romeo Del Rosario, Alan Quiles, Joseph Quiles, Ronald Suprino, Rolando Felizardo, Efren Fernandez, Damian Aklan, Welard Bautista, Rodrigo Suprino, Noel Janer, Jesus Macaraeg, Reynaldo Batica, Rhonnel Rodil, Eduardo Peremne, Mamerto Brigoli, Ireneo Odiamar, Rex Ignacio, Edgardo Mahaguay, Reyes Suprino, Rodrigo Dela Cruz, Ramil Bautista, Francis Suprino, Eduardo Tiongson, Joel Cammayo, Arwen Dablo, Alex Dela Vega, Bernard Gallogo, Rex Farnacio, Ruben De Castro, Rowan Janer, Raquel Janer, and Bernardo Macaraeg their *salary differentials, service incentive leave pay and 13th month pay* in the aggregate amount of ONE MILLION TWO HUNDRED FIFTY-SIX THOUSAND THREE HUNDRED SIXTY-SIX and 80/100 PESOS (₱1,256,366.80).

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[8] *Rollo*, p. 14; Department Order No. 10, Series of 1997, Rule VIII-A, Secs. 10, 14(a), 19-22 & 24.

Respondents are further assessed the amount equivalent to ten percent (10%) of the total award, as and for attorney's fees.

The computation of the complainants' individually adjudged benefits shall form part of this Decision as Annex "A" hereof.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[9] (Emphasis supplied)

Respondents appealed the decision of the Labor Arbiter to the NLRC. On December 19, 2003, the NLRC reversed the Labor Arbiter disposition and ruled that there was no illegal dismissal. The *fallo* of the NLRC decision reads:

WHEREFORE, in view of all the foregoing, the appealed decision of the Labor Arbiter is hereby REVERSED and SET ASIDE and a new decision is hereby rendered finding that there was no illegal dismissal committed by respondents, hence, no liability for backwages. However, complainants are awarded their salary differentials, service incentive leave pay and 13th month pay except for the year 2000 in the aggregate amount of ONE MILLION TWO HUNDRED FIFTY-SIX THOUSAND THREE HUNDRED SIXTY-SIX AND 80/100 (₱1,256,366.80) and 10% ATTORNEY's FEES based on the salary differentials, SILP and 13th month pay.

SO ORDERED.[10]

he NLRC found that petitioners Caboteja, Dumalagan, and Salvador were separated from their jobs for just and valid causes. They were given the opportunity to explain their sides. As for the quitclaims previously executed by the other petitioners, the NLRC ruled that these were sufficient basis to release respondent BMA from liability.

With respect to the first and second assigned errors, the records show that complainants Elmer Caboteja, Erico "Jojo" Dumalagan and Ronaldo Salvador were separated from their jobs for just and valid causes and after they were given the chance to explain their sides. *Copies of memoranda were served upon them advising their*

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[9] *Id.* at 401.

[10] *Id.* at 138.

violation of company rules and regulations and rude attitude and disrespect to superiors and disrespect to superiors in the case of Caboteja and failure to perform duties and responsibilities in the case of Dumalagan and Salvador. They were asked to explain and finding their explanations unacceptable, respondents dismissed them. Hence, they are not entitled to separation pay.

As regards the other complainants, there is no showing that they were illegally dismissed from their jobs by BMA. They have not given details on to whom they reported for work, who barred them from entering the respondents' premises and from working, in so many words how they were told that they were already dismissed. *The only evident fact is that they just stopped reporting for work beginning October 18, 2001 without informing BMA why there were doing so.* Their claim that they were not allowed by the respondents to return to their work is hard to believe. Why should the respondents terminate simultaneously the services of the complainants and completely paralyze respondents' business operation, particularly their service contract with SMC? Complainants have not shown any reason which would compel the respondents to resort to mass dismissal. On the other hand, complainants have strong reason to paralyze respondents' operation in order to force compliance to their demands.

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In fact, the records of this case also disclose that during the mandatory conciliation proceedings, BMA urged these complainants to go back to work, but may refused to do so. *Obviously, their refusal to go back to their work was a deliberate move to force respondents to give in to their demands.* Considering this refusal, it is not hard to believe that complainants were not dismissed but rather they refused to work in order to paralyze respondents' operations and force them to give in to complainants' demands.[11] (Emphasis supplied)

CA Disposition

Aggrieved, petitioners filed a Rule 65 petition with the CA. The following grounds were interposed: (1) that the NLRC gravely abused its discretion in holding that Caboteja, Dumalagan,

[11] *Id.* at 133-135.

and Salvador were validly dismissed; (2) that the other petitioners were not dismissed but were guilty of abandonment; and (3) that the quitclaims executed by eleven of the petitioners barred the complaint for illegal dismissal.[12]

On April, 15, 2005, the CA denied the petition, affirming in full the NLRC disposition, thus:

> WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The assailed Decision dated December 19, 2003 and Resolution dated July 20, 2004 of the National Labor Relations Commission in the consolidated cases, NLRC Case No. CN 08-04522-01-CA No. 036856-03 (NLRC NCR North Sector Case Nos. 08-04522-2001, 09-04941-2001, 00-11-05023-2001, 00-11-05969-2001, 11-01-00450-2002, 02-00934-2002, 12-06288-2001, and 12-06320-2001), are hereby AFFIRMED and UPHELD.
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> No pronouncement as to costs.
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> SO ORDERED.[13]

In ruling against petitioners, the CA found that the NLRC committed no reversible error or grave abuse of discretion in ruling that petitioners were not illegally dismissed but actually refused to report back to work after staging a surprise stoppage that paralyzed respondent BMA's business operations at the Pasig warehouse on October 18, 2001.

Issues

Undaunted, petitioners resorted to this review on *certiorari*, anchored on the following grounds:

> The CA committed a serious legal error in not ruling that respondent San Miguel Corporation (principal of respondent BMA Philasia), and respondent Arlene Eusebio, (president and owner of respondent BMA Philasia) are all solidarily liable for petitioners' money claims.

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[12] *Id.* at 67.

[13] *Id.* at 73.

The CA committed a serious legal error in ruling that the quitclaims executed by eleven (11) of the petitioners, in relation to their claims for underpayment of wages before the DOLE, also barred their subsequent complaint for illegal dismissal, despite the fact that the said complaint was not yet in existence at the time the quitclaims were executed.

The CA committed a serious legal error in refusing to hold that respondent San Miguel Corporation was petitioners' real employer despite the fact that respondent BMA Philasia was not duly registered with the DOLE and caused the workers to perform tasks directly related to the business of respondent San Miguel Corporation and under the latter's supervision.

The CA committed a legal error and acted with grave abuse of discretion in holding that petitioners Elmer Caboteja, Joan Erico Dumalagan, and Ronaldo Salvador were not illegally dismissed from their jobs, despite a previous ruling of the Labor Arbiter to the contrary.

The CA committed a serious legal error in not awarding damages, at the very least, to petitioners Joan Erico Dumalagan, and Ronaldo Salvador for violation of their right to due process.

The CA seriously committed an error of law in holding that the rest of the petitioners abandoned their jobs and were not dismissed therefrom, contrary to the findings of the Labor Arbiter who heard the case.[14] (Underscoring supplied)

Our Ruling

Petitioners argue mainly that their employer is, in fact, respondent SMC, not respondent BMA. They contend that BMA is a labor-only contractor and SMC, as their true employer, should be held directly liable for their money claims.

A finding that a contractor is a "labor-only" contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed

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[14] *Id.* at 25-27.

contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.[15]

Both the Labor Arbiter and the NLRC found that the employment contracts of petitioners duly prove that an employer-employee relationship existed between petitioners and BMA. We hasten to add that the existence of an employer-employee relationship is ultimately a question of fact and the findings by the Labor Arbiter and the NLRC on that score shall be accorded not only respect but even finality when supported by ample evidence.[16]

In its ruling, the NLRC considered the following elements to determine the existence of an employer-employee relationship: (1) the selection and engagement of the workers; (2) power of dismissal; (3) the payment of wages by whatever means; and (4) the power to control the worker's conduct.[17] All four elements were found by the NLRC to be vested in BMA. This NLRC finding was affirmed by the CA:

> x x x It is the BMA which actually conducts the hauling, storage, handling, transporting, and delivery operations of SMC's products pursuant to their warehousing and Delivery Agreement. BMA itself hires and supervises its own workers to carry out the aforesaid business activities. *Apart from the fact that it was BMA which paid for the wages and benefits, as well as SSS contributions of petitioners, it was also the management of BMA which directly supervised and imposed disciplinary actions on the basis of established rules and regulations of the company*. The documentary evidence consisting of numerous memos throughout the period of petitioners' employment leaves no doubt in the mind of this Court that petitioners

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[15] *Aboitiz Haulers, Inc. v. Dimapatoi,* G.R. No. 148619, September 19, 2006, 502 SCRA 271.

[16] *AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission,* 334 Phil. 712 (1997).

[17] *Consolidated Broadcasting System v. Oberio,* G.R. No. 168424, June 8, 2007, 524 SCRA 365; *Victory Liner v. Race,* G.R. No. 164820, March 28, 2007, 519 SCRA 356; *Jo v. National Labor Relations Commission,* 381 Phil. 428 (2000).

are only too aware of who is their true employer. Petitioners received daily instructions on their tasks form BMA management, particularly, private respondent Arlene C. Eusebio, and whenever they committed lapses or offenses in connection with their work, it was to said officer that they submitted compliance such as written explanations, and brought matters connected with their specific responsibilities.[18]

The employer-employee relationship between BMA and petitioners is not tarnished by the absence of registration with DOLE as an independent job contractor on the part of BMA. The absence of registration only gives rise to the presumption that the contractor is engaged in labor-only contracting, a presumption that respondent BMA ably refuted.

Thus, We find no grave abuse of discretion in the CA observation that respondent BMA is the true employer of petitioners who should be held directly liable for their claims. Likewise, no grave abuse of discretion can be ascribed to the CA when it ruled that illegal dismissal was absent.

The records fully disclose that petitioners Caboteja, Dumalagan, and Salvador were separated from their jobs for just and valid causes. Caboteja was cited for violation of company rules and regulations and disrespectful conduct. Dumalagan and Salvador were investigated for failure to perform duties and responsibilities. After their explanations were found unacceptable, they were accordingly dismissed.

As for the other petitioners, they contend that they were illegally dismissed when respondent BMA barred them from entering the work premises and from performing their work. Both the NLRC and the CA found that petitioners failed to substantiate this contention. Rather, what was shown in the records was that they simply stopped reporting for work starting October 18, 2001 when they staged a picket. The CA observation along this line is worth restating:

x x x petitioners failed to substantiate their claim that they had been prevented from entering the work premises after staging a "picket"

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[18] *Rollo,* p. 72.

on October 18, 2001 to further press their demands for payment of their money claims. At this time, the labor standards case was already pending with the DOLE District Office and petitioners could have availed of said proceedings with the intervention of DOLE officials. Instead, however, they resorted to an illegal stoppage of work that paralyzed the business operations of BMA. As aptly noted by the NLRC, there is simply no probable or logical reason for private respondent BMA to simultaneously dismiss its workers that will disrupt business operations at the warehouse. *Under the factual circumstances, it clearly appears that petitioners refused to report back to their work in order to force their employer BMA to give in to their immediate demand for the salary differentials and unpaid benefits subject of their complaint with the DOLE.* Hence, BMA cannot be held liable for illegal dismissal.

While it is true that the defense of abandonment may not be given credence or is negated by the immediate filing of illegal dismissal cases by the affected employees, *records clearly reveal that as of October 18, 2001, petitioners without justifiable cause failed and refused to report back to their work.* Their claim of having been prevented from entering the work premises was not given due weight for no particulars was even alleged by them in their report back to their jobs, who prevented their entry to the company premises and details as to what steps they took to bring the matter to the attention of DOLE District Office wherein their complaint for labor standards violation was already pending.[19] (Emphasis supplied)

Moreover, eleven of petitioners contend that their quitclaims should not be considered as a bar to their complaint for illegal dismissal because that complaint was not yet in existence at the time the quitclaims were executed. That the quitclaims were executed voluntarily is not denied by petitioners. They, however, contend that the quitclaims should be construed as limited to the money claims in connection with the first labor standards complaint[20] they had filed before the DOLE district office.

Unless there is a showing that the employee signed involuntarily or under duress, quitclaims and releases are

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[19] *Id.* at 69-70.

[20] See note 2.

upheld by this Court as the law between the parties.[21] If the agreement was voluntarily entered into by the employee, with full understanding of what he was doing, and represents a reasonable settlement of the claims of the employee, it is binding on the parties and may not be later disowned simply because of a change of mind.[22] In the case under review, the quitclaims and releases signed by petitioners stated:

> That for and in consideration of the sum of FIFTY-THREE THOUSAND PESOS (₱53,000.00)[23] in settlement of my/our claim/s as financial assistance and/or gratuitously given by my/our employer receipt of which is hereby acknowledge to my/our complete and full satisfaction, I/we hereby release and discharge the above respondent and/or its officers from any and all claims by way of wages, overtime pay, differential pay, or otherwise as may be due me/us incident to my/our past employment with said establishment. *I/we hereby state further that I/we have no more claim, right or action of whatsoever nature whether past, present or contingent against the said respondent and/or its officers*.[24] (Emphasis supplied)

As correctly observed by the NLRC, the language employed by the above quitclaims and releases indicates in no uncertain terms that petitioners voluntarily and freely acknowledged receipt of full satisfaction of all claims against respondents. Thus, the quitclaims effectively barred petitioners from questioning their dismissal.

Social justice must be founded on the recognition of the necessity of interdependence among diverse units of a society

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[21] *C. Planas Commercial v. National Labor Relations Commission,* G.R. No. 144619, November 11, 2005, 474 SCRA 608; *Unicorn Safety Glass, Inc. v. Basarte,* G.R. No. 154689, November 25, 2004, 444 SCRA 287; *Philippine Carpet Employees Association v. Philippine Carpet Manufacturing Corporation,* 394 Phil. 716 (2000).

[22] *Periquet v. National Labor Relations Commission,* G.R. No. 91298, June 22, 1990, 186 SCRA 724.

[23] In varying amounts for each individual.

[24] *Rollo,* p. 69.

and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life.[25] While labor should be protected at all times, this protection must not be at the expense of capital.

WHEREFORE, the petition is *DENIED* and the assailed Decision of the Court of Appeals *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169498. December 11, 2008]

OSCAR DELOS SANTOS and ELIZA DELOS SANTOS, *petitioners, vs.* **COURT OF APPEALS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PURPOSE; REQUISITES; EXPOUNDED.— A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction. For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed

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[25] *Agabon v. National Labor Relations Commission,* G.R. No. 158693, November 17, 2004, 442 SCRA 573, 615, citing *Calalang v. Williams,* 70 Phil. 726, 735 (1940).

[*] Designated as additional member vice Associate Justice Antonio Eduardo B. Nachura per raffle dated November 26, 2008.

against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. "Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law. Although the court has absolute discretion to reject and dismiss a petition for *certiorari*, in general, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars. One of the procedural errors for which the court could dismiss a petition for *certiorari* is the failure of the petitioner to file a motion for reconsideration of the assailed order or decision. A motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary writ of *certiorari* since a motion for reconsideration is still considered an adequate remedy in the ordinary course of law. The rationale for the filing of a motion for reconsideration is to give an opportunity to the lower court to correct its imputed errors.

2. ID.; ID.; ID.; SINCE THE CASE AT BAR RESONATES WITH A PIERCING AND URGENT CALL FOR JUSTICE FOR A FOUR-YEAR-OLD BOY SERIOUSLY CRIPPLED BY AN ACCIDENT CAUSE BY NEGLIGENCE, THE COURT IS PERSUADED TO EXCUSE THE PROCEDURAL FLAW SO IT COULD FULLY HEED THE CALL.— In the present case, the spouses Delos Santos did file a Motion for Reconsideration but they were only able to do so beyond the reglementary period. Moreover, since the case at bar resonates with a piercing and urgent call for justice for a four-year-old

boy seriously crippled by the accident caused by the negligence of Sagosoy, the Court is persuaded to excuse the procedural flaw so it could fully heed the call. Laws and rules should be interpreted and applied not in a vacuum or in isolated abstraction, but in light of surrounding circumstances and attendant facts in order to afford justice to all. This Court is not impervious to instances when rules of procedure must yield to the loftier demands of substantial justice and equity. Procedural rules are mere tools designed to facilitate the attainment of justice; their application must be liberalized to promote public interest. In this instance, the Court has no doubt that substantial justice will be served and patent injustice will be obviated by giving due course to this Petition in the presence of compelling reasons to disregard the spouses Delos Santos's procedural mistake.

3. ID.; ID.; ID.; THE RELAXATION OF PROCEDURAL RULES IS EVEN MORE IMPERATIVE IN CASE AT BAR WHERE THERE IS AN UNDENIABLE NEED FOR THE COURT TO SETTLE THE THRESHOLD FACTUAL ISSUES TO FINALLY GIVE JUSTICE TO THE PARTIES.— What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. The relaxation of procedural rules is even more imperative in the instant Petition where there is an undeniable need for this Court to settle threshold factual issues to finally give justice to the parties. It is true that this Court is not a trier of facts, but there are recognized exceptions to this general rule such as when the appellate court had ignored, misunderstood, or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case; or when its findings were totally devoid of support; or when its judgment was based on a misapprehension of facts.

4. CRIMINAL LAW; CIVIL LIABILITY; SUBSIDIARY CIVIL LIABILITY OF EMPLOYERS; SINCE IT WAS DULY PROVEN THAT THE ACCUSED HAD NO REAL PROPERTIES TO SATISFY THE JUDGMENT, HIS

EMPLOYER MUST ANSWER FOR THE DAMAGES HE CAUSED.— Justice and fairness dictate that the spouses Delos Santos should be compensated for the tragic fate of their son, and the rule of law should be enforced against those persons who may be adjudged liable, brushing aside hornbook procedural principles which unduly delay the dispensation of justice to an innocent and hapless boy who practically lost his life to an accident due to the negligence of another. Since it was duly proven that Sagosoy had no real or personal properties to satisfy the judgment, then Sagosoy's employer must answer for damages Sagosoy caused. The statutory basis for an employer's subsidiary liability is found in Articles 102 and 103 of the Revised Penal Code. This liability is enforceable in the same criminal proceeding in which the award is made. This liability attaches when the employees who are convicted of crimes committed in the performance of their work are found to be insolvent and are thus unable to satisfy the civil liability adjudged.

5. ID.; ID.; ID.; BOTH THE EMPLOYER AND HIS CORPORATION SHOULD BE DECLARED THE EMPLOYERS OF THE ACCUSED WHO ARE BOTH SUBSIDIARILY LIABLE FOR THE ACCUSED'S LIABILITIES *EX DELICTO*.— The Court has scrupulously examined the records of this case and concluded that Sagosoy was working for both Dy and Dyson Corporation when the van he was driving collided with the horse-drawn carriage carrying Ferdinand. In his testimony before the RTC, Sagosoy narrated that he was employed by Dy who was doing business under the name of Dyson Corporation. Sagosoy's testimony is validated by the Certificate of Incorporation of Dyson Corporation showing that Dy is one of the major stockholders of Dyson Corporation. Also, the SSS records of Sagosoy state that his employer is Dyson Corporation. These pieces of evidence strongly prove that Sagosoy is also deemed an employee of Dyson Corporation. In contrast, Dyson Corporation does not at all offer any controverting evidence, and vainly centers its defense on procedural rhetoric. In addition, the records are bereft of information on any other business or industry that Dy is engaged in and for which he personally employs Sagosoy. Sagosoy could not be the mere private driver of Dy because when the accident occurred, Sagosoy was driving an Isuzu Forward van, which is primarily used for the delivery of goods

and effects. Taking note of the fact that Dy is the Chief Executive Officer of Dyson Corporation, it would appear that the van being driven by Sagosoy was only registered in Dy's name, but was actually being used by Dyson Corporation in the conduct of its business. Given these circumstances, both Dy and Dyson Corporation should be declared the employers of Sagosoy who are both subsidiarily liable for Sagosoy's liabilities *ex delicto.*

6. ID.; ID.; ID.; NO NEED TO PIERCED THE VEIL OF CORPORATE FICTION CONSIDERING THAT THE EMPLOYER AND HIS CORPORATION ARE TREATED AS SEPARATE ENTITIES WHICH IS THE REASON BEHIND WHY THEY ARE BEING DECLARED "CO-EMPLOYERS" OF THE ACCUSED.— Contrary to the ruling of the Court of Appeals, there is no need to pierce the veil of corporate fiction in this case, considering that Dy and Dyson Corporation are precisely being treated as separate entities, which is the reason why they are being declared "co-employers" of Sagosoy. That Dy is hiding behind the personality of Dyson Corporation in order to escape liability is not even relevant herein. The evidence and the circumstances establish that Dy is the registered owner of the van driven by Sagosoy in furtherance of the business of Dyson Corporation; and that Dyson Corporation uses the van driven by Sagosoy in its business operation and recognizes Sagosoy as one of its employees per the latter's SSS records. Hence, both Dy and Dyson Corporation can be deemed the employers of Sagosoy.

7. ID.; ID.; ID.; COUNSELS OF PARTIES ARE WARNED NOT TO EMPLOY ANY PROCEDURAL TACTICS THAT WOULD FURTHER DELAY THE EXECUTION OF THE TRIAL COURT'S DECISION.— With the pronouncement that both Dy and Dyson Corporation are subsidiarily liable for the damages caused to the spouses Delos Santos, let this much prolonged litigation be put to an end. The counsels of the parties are hereby warned not to employ any procedural tactics that would further delay the execution of the RTC Decision dated 27 September 2002 in Criminal Case No. 1116-V-99. Litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. In the words of Mr. Justice Malcolm, "More important than anything else, is that the court should be right and to render justice where justice is due."

APPEARANCES OF COUNSEL

Alferos & Po Law Office for petitioners.
Caluso Chica & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Special Civil Action for *Certiorari*, Prohibition and *Mandamus* under Rule 65 of the Revised Rules of Court filed by petitioners spouses Oscar and Eliza delos Santos (spouses Delos Santos), seeking to reverse and set aside the Decision[1] dated 28 June 2005 of the Court of Appeals in CA-G.R. SP No. 83234 for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. In its assailed Decision, the Court of Appeals reversed the Orders dated 10 February 2004 and 1 March 2004 of the Regional Trial Court (RTC) of Valenzuela, Branch 172, in Criminal Case No. 1116-V-99, declaring Saturnino Dy, also known as Juanito Dy (Dy), and Dyson Surface and Coating Corporation (Dyson Corporation) as joint employers of the accused Antonio Sagosoy (Sagosoy), who should both be held liable solidarily with Sagosoy for the injury caused to Ferdinand delos Santos (Ferdinand).

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

On 18 March 1998, at around 7:00 o'clock in the morning, the Isuzu forward van driven by Sagosoy collided with a horse-drawn carriage steered by Oscar delos Santos. Oscar delos Santos was with his four-year-old son Ferdinand who was seated in the carriage. The collision left the horse dead and Ferdinand seriously injured with a broken spinal cord. A surgical operation to repair the broken spinal cord could not be performed on Ferdinand because of his tender age. Thus, Ferdinand's broken

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[1] Penned by Associate Justice Arturo D. Brion with Associate Justices Eugenio S. Labitoria and Eliezer R. de los Santos, concurring; *rollo*, pp. 15-27.

spinal cord further caused irreversible damage to his vision, speech, and motor skills.

The van driven by Sagosoy bears plate number ULP 725 registered under the name of Dy of Dyson Corporation.

An Information[2] charging Sagosoy with the crime of Reckless Imprudence Resulting in Serious Physical Injuries and Damage to Property was eventually filed before the RTC, which reads:

> That on or about the 18th day of March, 1998, in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, being then the driver of an Isuzu Forward Van bearing Plate No. 725, did then and there unlawfully and feloniously drive, manage and operate the same along Tatalon, Ugong, this municipality, in a reckless, negligent and imprudent manner, without taking the necessary precautions to avoid accident to person and damage to property, and so, as a result of such carelessness, negligence and imprudence, said vehicle driven by the accused, hit and collide with Horse-Drawn Vehicle (Tiburine) causing said Tiburine to be damaged in the amount of ₱9,200.00 and causing further the death of the horse valued at ₱75,000.00 to the damage and prejudice of the owner thereof, and as further consequence, Ferdinand delos Santos sustained physical injuries which requires medical attendance for a period of more than 30 days and incapacitated said Ferdinand delos Santos from performing his habitual work for the same period of time.

The case was docketed as Criminal Case No. 1116-V-99.

When arraigned, Sagosoy pleaded not guilty.[3]

After trial on the merits, the RTC rendered a Decision4 on 27 September 2002 in Criminal Case No. 1116-V-99 finding Sagosoy guilty of the crime charged, thereby sentencing him to a straight penalty of four (4) months imprisonment and to indemnify the spouses Delos Santos for actual and moral damages resulting from Ferdinand's injury. The *fallo* of the said RTC Decision reads:

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[2] Records, p. 1.

[3] *Id.* at 18.

WHEREFORE, judgment is hereby rendered finding accused ANTONIO SAGOSOY *y* NAMALATA guilty beyond reasonable doubt and as principal of the crime of reckless imprudence resulting to serious physical injuries and damage to property, without any attending mitigating or aggravating circumstance and hereby sentences him to a straight penalty of FOUR (4) MONTHS of *arresto mayor*. The accused is further sentenced to pay [the Spouses Delos Santos] the amount of ₱85,000.00 representing the medical expenses after deducting the amount of ₱150,000.00 contributed by the employer of the accused, the amount of ₱9,200.00 representing the cost of repair of the damaged tiburine, the amount of ₱75,000.00 representing the value of the horse, and the amount of ₱300,000.00 representing the cost of the operation to be performed on Ferdinand upon reaching the age of 18. Finally, the accused is sentenced to pay [the Spouses Delos Santos] the amount of ₱500,000.00 as moral damages, to pay Ferdinand delos Santos, through his parents [the Spouses Delos Santos], the amount of ₱200,000.00 as indemnity, to pay the amount equivalent to 10% of the amount to be collected as reasonable attorney's fees, and to pay the costs of suit, all without subsidiary imprisonment in case of insolvency.

The spouses Delos Santos filed a Motion for the Issuance of Writ of Execution,[5] which was favorably acted upon by the RTC. The First Writ of Execution[6] was issued on 3 January 2003 commanding the Sheriff to execute and make effective its 27 September 2002 Decision in Criminal Case No. 1116-V-99.

An attempt to satisfy the judgment was made by the Sheriff, but he found no real or personal properties of Sagosoy to answer for the latter's civil liability to the spouses Delos Santos. The unsatisfied Sheriff's Return[7] prompted the spouses Delos Santos to file a Motion for the Issuance of Alias Writ of Execution[8] against the properties and income of Dy in light of his subsidiary liability as the employer of Sagosoy. The motion was opposed

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[4] *Id.* at 144-147.

[5] *Id.* at 139-140.

[6] *Id.* at 156-157.

[7] *Id.* at 160.

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

by Dy who denied that he was the employer of Sagosoy. According to Dy, at the time the accident occured, Sagoysoy was merely doing an isolated and non-business related driving task for him.

After weighing the arguments of the parties, the RTC issued on 30 May 2003 an Order directing the issuance of an Alias Writ of Execution, not just against the income and properties of Sagosoy, but also those of Dy.[9] The Alias Writ of Execution[10] was issued on 3 June 2003.

Subsequently, the RTC, in an Order dated 23 June 2003, denied Dy's Motion for Reconsideration of its Order dated 30 May 2003.

Dy filed a Petition for *Certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 78005, averring that the RTC committed grave abuse of discretion in issuing its Orders dated 30 May 2003 and 23 June 2003. The appellate court, however, in a Decision11 dated 28 September 2004, dismissed Dy's Petition and affirmed the questioned RTC Orders. Said Decision of the Court of Appeals in CA-G.R. SP No. 78005 became final and executory on 20 October 2004 as evidenced by the Entry of Judgment already made therein.[12]

In the *interregnum*, per the Sheriff's Return dated 6 October 2003, the Alias Writ of Execution was again returned unsatisfied due to the failure of the Sheriff to locate any real or personal property registered in the name of Dy.[13]

Unrelenting, the spouses Delos Santos filed a Motion for the Issuance of a Second Writ of Execution before the RTC, identifying Dyson Corporation as the co-employer of Sagosoy, together with Dy. The spouses Delos Santos called the attention

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

[10] *Id.* at 265-267.

[11] *Id.* at 461-468.

[12] *Id.* at 469.

[13] *Id.* at 264.

of the trial court to particular pieces of evidence to establish that Sagosoy, at the time of the accident, worked for both Dy and Dyson Corporation, namely: (1) Sagosoy's testimony that Dy was doing business in the name of Dyson Corporation; (2) Sagosoy's Social Security System (SSS) record showing that Dyson Corporation was his registered employer; and (3) the Articles of Incorporation of Dyson Corporation establishing that Dy was one of the majority stockholders of Dyson Corporation.[14] The spouses Delos Santos also propounded that the accident which caused serious physical injuries to Ferdinand took place while Sagosoy was undertaking an activity in furtherance of the business operations of Dyson Corporation.[15]

Dyson Corporation timely opposed the spouses Delos Santos's latest Motion, underscoring the inconsistencies in the spouses Delos Santos's stand on the crucial issue of who was the real employer of Sagosoy. Dyson Corporation averred that the spouses Delos Santos should not be allowed to conveniently shift their position on the said issue, and now joined Dyson Corporation with Dy as Sagosoy's employers after it turned out that Dy alone was financially incapable of satisfying the civil liability under the RTC judgment in Criminal Case No. 1116-V-99.[16]

In an Order[17] dated 10 February 2004, the RTC granted the spouses Delos Santos's Motion and declared Dy and Dyson Corporation as co-employers of Sagosoy. In its Order, the RTC explained that while the van driven by Sagosoy was owned by Dy, it was being used by Dyson Corporation in its business operations. The RTC further justified that the initial confusion as to the identity of Sagosoy's employer was understandable and did not render impossible the conclusion that both Dy and Dyson Corporation were Sagosoy's employers who should both accordingly be held liable for the civil liability arising from the crime of which Sagosoy was adjudged guilty.

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[14] *Id.* at 269-270.

[15] *Id*.

[16] *Id.* at 279-281.

[17] *Id.* at 290-291.

In an Order[18] dated 1 March 2004, the RTC denied the Motion for Reconsideration of Dyson Corporation for no sufficient merit.

For allegedly having been issued with grave abuse of discretion, the RTC Orders dated 10 February 2004 and 1 March 2004 were challenged by Dyson Corporation before the Court of Appeals through a Special Civil Action for *Certiorari*, docketed as CA-G.R. SP No. 83234.

On 28 June 2005, the Court of Appeals promulgated a Decision in CA-G.R. SP No. 83234, finding therein that the issuance by the RTC of its 10 February 2004 and 1 March 2004 Orders was tainted with grave abuse of discretion. The appellate court reasoned that Dy and Dyson Corporation could only be treated as joint employers of Sagosoy upon the piercing of the veil of corporate fiction, which was not warranted in the instant case since it had not been shown that Dy was hiding behind the cloak of Dyson Corporation in order to evade liability. Thus, the *fallo* of the Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the petition is hereby **GRANTED.** We hereby **ANNUL** and **SET ASIDE** the assailed orders. Costa against [the spouses Delos Santos].[19]

The spouses Delos Santos filed a Motion for Reconsideration on 10 August 2005 explaining that the delay was caused by their counsel who did not notify them of the receipt of the Court of Appeals Decision dated 28 June 2005. It was only upon inquiry with the RTC on 26 July 2005 that they learned of the appellate court's decision.

The Court of Appeals, in a Resolution[20] dated 30 August 2005, refused to give due course to the spouses Delos Santos's Motion for Reconsideration since it was not filed within the reglementary period. According to the appellate court, the spouses Delos Santos thru counsel received a copy of their 28 June 2005 Decision on 26 July 2005. Hence, the spouses Delos Santos

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[18] *Id.* at 304.

[19] *Rollo,* p. 27.

[20] CA *rollo,* pp. 178-179.

had only until 29 July 2005 to move for the reconsideration of the judgment or to appeal it. The Motion for Reconsideration was filed only on 10 August 2005. Resultantly, the Court of Appeals Decision in CA-G.R. SP No. 83234 became final and executory on 19 September 2005.

The spouses Delos Santos are now before this Court seeking the reversal of the Court of Appeals disquisition on the ground of grave abuse of discretion. For the resolution of this Court are the following issues:

I.

WHETHER OR NOT THE FILING OF THE INSTANT SPECIAL CIVIL ACTION FOR *CERTIORARI*, IS PROPER IN THE INSTANT CASE.

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN DENYING THE SPOUSES DELOS SANTOS' MOTION FOR RECONSIDERATION.

III.

WHETHER OR NOT DY AND DYSON CORPORATION ARE JOINT EMPLOYERS OF SAGOSOY AND SHOULD THEREFORE BE HELD SUBSIDIARILY LIABLE FOR THE CIVIL LIABILITY ARISING FROM THE CRIME COMMITTED BY SAGOSOY.

The Court first dispenses with the procedural issues raised by the parties, particularly the propriety of the remedy they chose to avail herein.

The spouses Delos Santos justify their present Petition for *Certiorari*, Prohibition and *Mandamus* by averring the lack of any other plain, speedy or adequate remedy available in the ordinary course of law that could compensate them for the injury caused to their son. On the other hand, Dyson Corporation counters by highlighting the failure of the spouses Delos Santos to timely file their Motion for Reconsideration before the Court of Appeals in CA-G.R. SP No. 83234. Dyson Corporation argues that the special civil action of *certiorari* cannot be invoked as a substitute for the remedy of appeal that was already lost, less

so, when the requisites for *certiorari* were not faithfully complied with.

According to Section 1, Rule 65 of the Revised Rules of Court, a petition for *certiorari* may be filed under the following circumstances:

> SEC. 1. *Petition for certiorari* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.[21]

For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[22]

"Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of

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[21] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, 21 August 2004, 436 SCRA 123, 133.

[22] *Id*.

jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[23]

Although the court has absolute discretion to reject and dismiss a petition for *certiorari*, in general, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars. One of the procedural errors for which the court could dismiss a petition for *certiorari* is the failure of the petitioner to file a motion for reconsideration of the assailed order or decision.[24] A motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary writ of *certiorari* since a motion for reconsideration is still considered an adequate remedy in the ordinary course of law. The rationale for the filing of a motion for reconsideration is to give an opportunity to the lower court to correct its imputed errors.[25]

In the present case, the spouses Delos Santos did file a Motion for Reconsideration but they were only able to do so beyond the reglementary period.

Moreover, since the case at bar resonates with a piercing and urgent call for justice for a four-year-old boy seriously crippled by the accident caused by the negligence of Sagosoy, the Court is persuaded to excuse the procedural flaw so it could fully heed the call. Laws and rules should be interpreted and applied not in a vacuum or in isolated abstraction, but in light

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[23] *Id*.

[24] *Serrano v. Galant Maritime Services, Inc.*, 455 Phil. 992, 997-998 (2003).

[25] *Balayan v. Acorda*, G.R. No. 153537, 5 May 2006, 489 SCRA 637, 642.

of surrounding circumstances and attendant facts in order to afford justice to all. This Court is not impervious to instances when rules of procedure must yield to the loftier demands of substantial justice and equity. Procedural rules are mere tools designed to facilitate the attainment of justice; their application must be liberalized to promote public interest.[26]

In this instance, the Court has no doubt that substantial justice will be served and patent injustice will be obviated by giving due course to this Petition in the presence of compelling reasons to disregard the spouses Delos Santos's procedural mistake. Just as we had ruled in *Aguam v. Court of Appeals*[27]:

> The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Law suits, unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression

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[26] *Remulla v. Manlongat*, G.R. No. 148189, 11 November 2004, 442 SCRA 226, 236.

[27] 388 SCRA 587, 593-594 (2000).

of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[28]

The relaxation of procedural rules is even more imperative in the instant Petition where there is an undeniable need for this Court to settle threshold factual issues to finally give justice to the parties. It is true that this Court is not a trier of facts, but there are recognized exceptions to this general rule such as when the appellate court had ignored, misunderstood, or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case; or when its findings were totally devoid of support; or when its judgment was based on a misapprehension of facts.[29]

The Court now proceeds to the crucial substantive issue raised in this Petition: whether Dy and the Dyson Corporation are co-employers of Sagosoy who are subsidiarily liable for the civil liabilities arising from the crime committed by Sagosoy.

The Court of Appeals did not find Dyson Corporation as the co-employer of Sagosoy, relying on the Decision dated 28 September 2004 of the same court in CA-G.R. SP No. 78005 which sustained the subsidiary liability of Dy as the employer of Sagosoy and which had already attained finality. The appellate court also refused to adjudge Dyson Corporation to be solidarily liable with Dy unless the veil of corporate fiction was pierced.

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[28] *Alberto v. Court of Appeals*, 390 Phil. 253, 272 (2000).

[29] *Emco Plywood Corporation v. Abelgas*, G.R. No. 148532, 14 April 2004, 427 SCRA 496, 515.

The Court does not agree.

The spouses Delos Santos do not controvert the pronouncement of the Court of Appeals in its 28 September 2004 Decision in CA-G.R. SP No. 78005 that Dy, as the employer of Sagosoy, was subsidiarily liable for the civil obligations of his insolvent employee who caused injury to third persons in the course of the latter's employment. Indeed, the spouses Delos Santos agree with the appellate court that Dy should not be allowed to run scot-free from his liability in light of the fact that he was the owner of the van Sagosoy was driving at the time of the accident. What the spouses Delos Santos are seeking from this Court is the affirmation that in addition to Dy, Dyson Corporation is also the employer of Sagosoy, as several pieces of evidence would show, which should likewise be made answerable for the civil liabilities incurred by Sagosoy.

The Court notes that there was no way for the Court of Appeals in CA-G.R. SP No. 78005 to already deduce from the pleadings and evidence presented therein that Sagosoy was employed not just by Dy, but also by Dyson Corporation. The Petition in CA-G.R. SP No. 78005 was filed by Dy and all arguments and evidence necessarily revolved only around his liability as an employer. Moreover, the finding of the Court of Appeals in CA-G.R. SP No. 78005, that Sagosoy was working for Dy, is not necessarily in conflict with a subsequent ruling in another case that Sagosoy was employed not just by Dy, but also by Dyson Corporation. It bears to emphasize that Dy remains to be considered an employer of Sagosoy and still subsidiarily liable for the latter's civil obligations arising from the crime. However, if Dyson Corporation is declared a co-employer of Sagosoy together with Dy, then Dyson Corporation and Dy must now solidarily bear the subsidiary liability.

Justice and fairness dictate that the spouses Delos Santos should be compensated for the tragic fate of their son, and the rule of law should be enforced against those persons who may be adjudged liable, brushing aside hornbook procedural principles which unduly delay the dispensation of justice to an innocent and hapless boy who practically lost his life to an accident due to the negligence of another.

Since it was duly proven that Sagosoy had no real or personal properties to satisfy the judgment, then Sagosoy's employer must answer for damages Sagosoy caused. The statutory basis for an employer's subsidiary liability is found in Articles 102 and 103 of the Revised Penal Code, which read:

> Art. 102. *Subsidiary civil liability of innkeepers, tavernkeepers, and proprietors of establishments.* — In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.
>
> Innkeepers are also subsidiarily liable for restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.
>
> Art. 103. *Subsidiary civil liability of other persons.* — The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

This liability is enforceable in the same criminal proceeding in which the award is made. This liability attaches when the employees who are convicted of crimes committed in the performance of their work are found to be insolvent and are thus unable to satisfy the civil liability adjudged.[30]

The Court has scrupulously examined the records of this case and concluded that Sagosoy was working for both Dy and

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[30] *Franco v. Intermediate Appellate Court*, G.R. No. 71137, 5 October 1989, 178 SCRA 331, 338-339.

Dyson Corporation when the van he was driving collided with the horse-drawn carriage carrying Ferdinand. In his testimony before the RTC, Sagosoy narrated that he was employed by Dy who was doing business under the name of Dyson Corporation. Sagosoy's testimony is validated by the Certificate of Incorporation of Dyson Corporation showing that Dy is one of the major stockholders of Dyson Corporation. Also, the SSS records of Sagosoy state that his employer is Dyson Corporation. These pieces of evidence strongly prove that Sagosoy is also deemed an employee of Dyson Corporation. In contrast, Dyson Corporation does not at all offer any controverting evidence, and vainly centers its defense on procedural rhetoric.[31]

In addition, the records are bereft of information on any other business or industry that Dy is engaged in and for which he personally employs Sagosoy. Sagosoy could not be the mere private driver of Dy because when the accident occurred, Sagosoy was driving an Isuzu Forward van, which is primarily used for the delivery of goods and effects. Taking note of the fact that Dy is the Chief Executive Officer of Dyson Corporation, it would appear that the van being driven by Sagosoy was only registered in Dy's name, but was actually being used by Dyson Corporation in the conduct of its business. Given these circumstances, both Dy and Dyson Corporation should be declared the employers of Sagosoy who are both subsidiarily liable for Sagosoy's liabilities *ex delicto.*

Finally, contrary to the ruling of the Court of Appeals, there is no need to pierce the veil of corporate fiction in this case, considering that Dy and Dyson Corporation are precisely being treated as separate entities, which is the reason why they are being declared "co-employers" of Sagosoy. That Dy is hiding

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[31] During the proceedings for the execution of the RTC Decision dated 27 September 2002 in Criminal Case No. 1116-V-99, Dyson Corporation was given ample opportunity to controvert the evidence presented by the spouses Delos Santos by filing an Opposition to the spouses Delos Santos's Motion for the Issuance of Second Motion for Issuance of Writ of Execution. After the RTC granted the motion, Dyson Corporation filed a Motion for Reconsideration thereof.

behind the personality of Dyson Corporation in order to escape liability is not even relevant herein. The evidence and the circumstances establish that Dy is the registered owner of the van driven by Sagosoy in furtherance of the business of Dyson Corporation; and that Dyson Corporation uses the van driven by Sagosoy in its business operation and recognizes Sagosoy as one of its employees per the latter's SSS records. Hence, both Dy and Dyson Corporation can be deemed the employers of Sagosoy.

With the pronouncement that both Dy and Dyson Corporation are subsidiarily liable for the damages caused to the spouses Delos Santos, let this much prolonged litigation be put to an end. The counsels of the parties are herby warned not to employ any procedural tactics that would further delay the execution of the RTC Decision dated 27 September 2002 in Criminal Case No. 1116-V-99. Litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other.[32] In the words of Mr. Justice Malcolm, "More important than anything else, is that the court should be right and to render justice where justice is due."[33]

WHEREFORE, in view of the foregoing, the instant Petition is *GRANTED*. The Decision dated 28 June 2005 and Resolution dated 30 August 2005 of the Court of Appeals in CA-G.R. SP No. 83234 are *REVERSED and SET ASIDE*. The Orders dated 10 February 2004 and 1 March 2004 of the Regional Trial Court of Valenzuela, Branch 172, in Criminal Case No. 1116-V-99 are hereby *REINSTATED*. No costs.

SO ORDERED.

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

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[32] *Alonso v. Villamor*, 16 Phil. 315, 321 (1910).

[33] *Limketai Sons Milling, Inc. v. Court of Appeals*, 330 Phil. 171, 177 (1996).

THIRD DIVISION

[G.R. No. 174371. December 11, 2008]

THE PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **WARREN DELA CRUZ *Y* FRANCISCO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS GIVE DUE RESPECT TO THE ASSESSMENT OF FACTS OF TRIAL COURTS; ALLEGED INCONSISTENCY REFERS TO A MINOR AND INCONSEQUENTIAL MATTER AND DOES NOT IMPAIR THE WITNESS' CREDIBILITY.— It is settled that appellate courts give due respect to the assessment of facts of the trial court. The reason is simple. The trial court had the opportunity of not only receiving evidence but also of observing the witnesses while testifying. The respect accorded to the factual findings of the trial court should be maintained, unless it has overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in a case. Here, We find no compelling reason to disturb the factual findings of the trial court. The alleged inconsistency in Cayetano's testimony refers only to a minor matter. It is inconsequential and does not impair his credibility. In *People v. Prado*, this Court held: Inconsistencies and discrepancies on minor details of the testimony of a witness serve instead to strengthen his credibility as they are badges of truth rather than indicia of falsehood. The most candid witnesses oftentimes make mistakes and fall into confused and inconsistent statements but such honest lapses do not necessarily affect their credibility. Far from eroding the effectiveness of the testimonies of the two witnesses, such trivial differences in fact constitute signs of veracity. We agree with the CA that the alleged inconsistency "only challenges the exact time when Cayetano gave his statement to the police." The fact that Cayetano had conflicting accounts as to when he gave his statement to the police, does not in any way alter his testimony that appellant is one of the malefactors. He witnessed the crimes and had positively identified appellant.

2. ID.; ID.; ID.; ABSENCE OF IMPROPER MOTIVE ENTITLES TESTIMONY OF WITNESS TO FULL FAITH AND CREDENCE.— Cayetano specifically identified appellant as one of the assailants in his sworn affidavit before the police authorities. He even declared that he could also identify the other two suspects in case he sees them again. Cayetano confirmed this on the witness stand. Cayetano also testified that he had known appellant for a long time as a tricycle driver. Thus, he could not have been mistaken with his identity. Nor is there any evidence that Cayetano was impelled by improper motives in pointing a finger at appellant as one of the culprits. The absence of evidence of improper motive tends to indicate that his testimony is worthy of full faith and credence.

3. ID.; ID.; ID.; SELF-SERVING DENIAL CANNOT OVERTHROW POSITIVE IDENTIFICATION.— Self-serving denial cannot overthrow the positive identification that appellant was one of the perpetrators of the crime. In *Ferrer v. People*, this Court reiterated the longstanding doctrine that denial - . . . is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserve more credence and evidentiary weight. The Court reaffirmed this doctrine in *Velasco v. People*, where it was held that "[t]o be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit."

4. ID.; ID.; ID.; FLIGHT IS INDICATIVE OF GUILT; TESTIMONY OF APPELLANT'S MOTHER GIVEN LITTLE WEIGHT DUE TO THE POSITIVE IDENTIFICATION OF HER SON AS ONE OF THE CULPRITS.— Appellant even admitted his presence at the scene of the crime when it was committed. He admitted hiding from the clutches of the law for more than a year instead of reporting the matter to the police. His flight is indicative of guilt. We are not unmindful of the testimony of appellant's mother, Julieta. We, however, give little weight to it because of the positive identification of Cayetano that her son is one of the culprits. More importantly,

as a mother, Julieta cannot totally be considered as a disinterested witness. Her maternal instincts may impel her to protect her son at all cost, even to the point of prevarication.

5. ID.; ID.; ID.; CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; SHOWN BY THE FACT THAT THE VICTIMS WERE UNARMED, SHOT UNCEREMONIOUSLY WITHOUT ANY WARNING GIVING THEM THE OPPORTUNITY TO DEFEND THEMSELVES OR RETALIATE; ABUSE OF SUPERIOR STRENGTH IS ABSORBED IN TREACHERY.— There is treachery when the offender commits the crime employing means, methods or forms of execution thereof which tend directly and specifically to ensure its execution without risk to himself arising from the defense which the victim might make. The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberate or consciously adopted. Here, Danilo and Felix were shot from behind while they were innocently walking on their way to the cockpit arena in Dampalit, Malabon. They were unaware of the impending death that awaited them. In fact, they were unarmed. They were shot unceremoniously. The absence of warning denied them the opportunity to defend themselves or retaliate. Treachery was clearly present. Records also show that the malefactors were all armed while Danilo and Felix were not. There was abuse of superior strength. However, as the RTC and CA correctly held, abuse of superior strength is absorbed in treachery. Pursuant to this Court's ruling in *People v. Ellado*, abuse of superior strength can no longer be separately considered as an aggravating circumstance.

6. ID.; ID.; ID.; NO VIOLATION OF APPELLANT'S RIGHT TO INFORMATION; A READING OF THE ALLEGATIONS IN THE TWO INFORMATIONS AGAINST APPELLANT AND HIS CO-ACCUSED ARE VERY CLEAR.— Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure provide: Sec. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

> 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. This Court interpreted the above sections in *People v. Aquino,* as requiring simply that the Information enumerate the attendant circumstances mentioned in the law to qualify the offense. It is sufficient that these circumstances are specified in the Information to apprise the accused of the charge. A reading of the allegations in the two Informations against appellant and his co-accused are very clear. These allegations, once proven beyond reasonable doubt, qualify the killing of Danilo and Felix to murder. It would be an unreasonable burden for the prosecution if it is required to do more.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

THE Holy Book tells the story of Cain treacherously slaying his brother Abel. Then God asked Cain: "*Where is your brother Abel?*" Cain replied, "*I do not know. Am I my brother's keeper?*"[1] The story ended with God punishing and banishing Cain.

Though not involving brothers, the case before Us is similar to the Bible story because it involves treachery. And like Cain, appellant anchors his defense on bare denial despite the overwhelming evidence against him. As punishment, We affirm appellant's conviction for murder and his sentence of *reclusion perpetua*.

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[1] Genesis 4:9-10.

Appellant Warren dela Cruz y Francisco appeals the Decision[2] of the Court of Appeals (CA) affirming with modification that of the Regional Trial Court (RTC) in Malabon City[3] convicting him of two (2) counts of murder for the deaths of Danilo Valeriano and Felix Valeriano.

The Facts

On May 9, 1999, at around 2:45 p.m., Leonardo Cayetano, Danilo Valeriano and Felix Valeriano were on their way to the cockpit arena in Dampalit, Malabon. Leonardo was walking ahead of Danilo and Felix at the rice paddies at a distance of four (4) arms length away.

All of a sudden, Leonardo heard a couple of gunshots. Turning his back, he saw Danilo and Felix already sprawled and bloodied on the ground. Despite this, three (3) persons continued shooting them.[4] He recognized the person firing a .38 caliber as appellant Warren dela Cruz.[5]

Fearing for his life, Leonardo ran as fast as he could to an old storehouse. When the assailants left the crime scene, Leonardo ran towards the victims to help them, but they were already dead.[6]

The autopsy conducted by Dr. Manuel Lagonera revealed that Danilo and Felix died of multiple gunshot wounds. Felix sustained two (2) gunshot wounds in the body and one (1) in his head. Danilo had a gunshot wound in the left temporal

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[2] R*ollo,* pp. 3-16. CA-G.R. CR-H.C. No. 01208. Penned by Associate Justice Renato C. Dacudao (retired), and concurred by Associate Justices Regalado E. Maambong, Lucas P. Bersamin (concurring and dissenting), Jose C. Mendoza, and Celia C. Librea-Leagogo.

[3] CA *rollo,* pp. 12-17. Penned by Judge Benjamin T. Antonio.

[4] TSN, September 13, 2001, pp. 3-4.

[5] *Id.* at 4.

[6] *Id.* at 4-5.

region of his head.[7] Dr. Lagonera opined that the fatal wounds were fired at close range.[8]

On July 9, 1999, appellant and two (2) John Does were indicted for two (2) counts of murder, in two (2) Informations reading:

Criminal Case No. 21265-MN

The undersigned Asst. City Prosecutor accuses all the above-named accused of the crime of Murder, committed as follows:

That on or about the 9th day of May 1999 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with guns, with intent to kill, treachery and evident premeditation, and with abuse of superior strength did, then and there, willfully, unlawfully and feloniously attack, assault and shoot one DANILO L. VALERIANO, hitting him on his head, which caused his immediate death.

CONTRARY TO LAW.[9]

Criminal Case No. 21266-MN

The undersigned Asst. City Prosecutor accuses all the above-named accused of the crime of Murder, committed as follows:

That on or about the 9th day of May 1999 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, armed with guns, with intent to kill, treachery and evident premeditation, did, then and there, willfully, unlawfully and feloniously attack, assault and shoot one FELIX VALERIANO, JR., hitting him on his different parts of his body which caused his immediate death.

CONTRARY TO LAW.[10]

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[7] TSN, April 2, 2002, p. 6.

[8] *Id.* at 7.

[9] *Rollo,* p. 4.

[10] *Id.* at 5.

On November 11, 2001, appellant was arrested by virtue of a warrant of arrest.[11] The other suspects remained at large. On arraignment, appellant, assisted by counsel *de oficio,* pleaded not guilty to both Informations.[12] Trial on the merits thereafter ensued.[13]

Prosecution witness Leonardo Cayetano testified that he saw appellant and the other two suspects shoot the victims. Witness Dr. Lagonera testified on the cause of death of the victims.

Appellant invoked the defense of denial. He testified that on May 9, 1999, at around 2:45 p.m., he was walking along the rice paddies on his way to the cockpit in Dampalit, Malabon. He was 5 meters behind Felix and Danilo. While walking, a *banca* stopped in front of him and three (3) persons wearing black bonnets alighted. Upon seeing them, appellant stopped walking but one of them held him by the nape. He was ordered to stoop down. He immediately obliged for fear that he might be hurt.

With a gun pointed at his head, appellant was commanded not to shout and say anything. Then he heard around six (6) gun shots. He was told not to look back. He remained stooping in the ground for about fifteen (15) minutes.

After the assailants left, appellant stood up and saw the victims lying down. He ran towards the cockpit to go to his mother's place in Obando, Bulacan. He told his mother about the killing incidents. He did not report the killings to the authorities because of the threat he received from the assailants.[14]

Appellant's mother, Julieta Francisco, corroborated the testimony of her son. She testified that she was at the house of her in-law in Catanghalan, Obando, Bulacan on May 9, 1999. At around 3:00 p.m., she was surprised to see her son. He was

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[11] *Id.* at 7.

[12] *Id.* at 23.

[13] *Id.* at 30.

[14] TSN, December 17, 2002, pp. 2-6.

very pale and could not talk properly. Inquiring what was wrong, her son told her that there was a killing incident at the back of the cockpit arena in Dampalit. When asked about the identity of the victim, he replied that it was Danilo. It did not cross her mind to report the incident to the police.[15]

RTC and CA Dispositions

On December 23, 2003, the RTC rendered a joint decision convicting appellant of two (2) counts of murder, with a *fallo* reading:

> WHEREFORE, premises considered, the Court finds accused Warren de la Cruz *y* Francisco guilty beyond reasonable doubt of the offenses charged and is hereby sentenced to suffer the penalty of *reclusion perpetua* in each of these cases and to pay each of the heirs of the victims ₱50,000.00 by way of civil indemnity for the death and ₱20,000.00 each as actual expenses in the wake and burial of the victims.[16]

The RTC held that the defense of denial cannot prevail over the positive identification of Cayetano that appellant was one of the assailants. No ill motive can be imputed to Cayetano. The flight of appellant also belies his innocence.[17]

The RTC also ruled that the aggravating circumstance of evident premeditation was absent but there was treachery. The means of execution employed by the assailants did not give the victims opportunity to defend themselves or retaliate. It was also deliberately or consciously adopted.[18] There was abuse of superior strength considering the number of armed assailants against the unarmed victims. The element of treachery, however, absorbed abuse of superior strength.[19]

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[15] TSN, June 3, 2003, pp. 2-4.

[16] CA *rollo*, p. 17.

[17] *Id*.

[18] *Id.* at 16.

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

Appellant directly appealed to this Court.[20] In accordance with Our decision in *People v. Mateo*,[21] We referred the case to the CA for proper disposition.

On February 15, 2006, the CA rendered a decision affirming with modification that of the RTC, with a *fallo* reading:

> **UPON THE VIEW WE TAKE OF THIS CASE, THUS,** the assailed Joint Decision of the Regional Trial Court of Malabon City, Branch 170, in Criminal Cases Nos. 21265-MN and 21266-MN is **AFFIRMED** with **MODIFICATION**. The accused-appellant Warren de la Cruz y Francisco is convicted of two counts of murder, for the death of Danilo L. Valeriano and Felix Valeriano, Jr., and is sentenced to suffer the penalty of *reclusion perpetua* in each case. The accused-appellant is likewise ordered to pay the heirs of the victims the amount of ₱50,000.00 as moral damages, in addition to the amounts of ₱20,000.00 as actual damages and ₱50,000.00 as civil indemnity. Costs shall also be assessed against the accused-appellant.
>
> **SO ORDERED**.[22]

The appellate court held that the testimony of lone eyewitness Cayetano is credible. Like the RTC, the CA held that appellant's bare denial cannot prevail over Cayetano's straightforward and unwaivering identification. Inconsistency in his testimony is only minor and does not affect his credibility.[23] Appellant's flight also evinces a consciousness of guilt and a silent admission of culpability.[24]

The CA agreed with the RTC that treachery was present. The manner of attack employed by appellant and his two (2) companions was deliberate and unexpected. It did not give the victims the opportunity to defend themselves. They were shot from behind.[25]

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[20] *Id.* at 18.

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

[22] CA *rollo*, p. 15.

[23] *Id.* at 11.

[24] *Id.* at 12.

[25] *Id.* at 13.

The CA modified the RTC decision by awarding ₱50,000 moral damages in addition to the ₱20,000.00 actual damages and ₱50,000.00 civil indemnity awarded by the trial court.[26]

Appellant moved of reconsideration but his motion was denied.[27] Undaunted, he resorted to the present recourse.[28]

Issues

Appellant assigns twin errors in the RTC decision —

I

IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT TESTIMONY OF PROSECUTION WITNESS LEONARDO CAYETANO AND IN DISREGARDING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II

IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[29]

In his supplemental brief,[30] appellant claims that if he is guilty, he should only be convicted for homicide.[31]

Our Ruling

The trial court's assessment of credibility of witnesses is given great weight and respect; appellant was identified as one of the perpetrators of the crime. The issues raised by appellant hinge on the credibility of a witness. Appellant argues that the testimony of Cayetano was materially inconsistent. Cayetano initially testified that right after the shooting incident,

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[26] *Id.* at 14.

[27] *Id.* at 122-123.

[28] *Id.* at 30-42.

[29] *Rollo,* p. 32.

[30] *Id.* at 33-39.

[31] *Id.* at 36.

the police authorities conducted an investigation where he gave his statement to them. However, he contradicted himself when he further testified that he gave his testimony to the police two (2) weeks after the incident.[32]

Appellant also banks on the alleged inconsistencies in the evidence of Cayetano. He asserts that Cayetano testified that he recognized him as one of the assailants but he failed to mention this to the authorities when they took his statement during the investigation.[33] Appellant argues that although his defense is based on mere denial, the prosecution must rely on the strength of its own evidence rather on the weakness of the defense.[34]

It is settled that appellate courts give due respect to the assessment of facts of the trial court. The reason is simple. The trial court had the opportunity of not only receiving evidence but also of observing the witnesses while testifying. The respect accorded to the factual findings of the trial court should be maintained, unless it has overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in a case.[35]

Here, We find no compelling reason to disturb the factual findings of the trial court. The alleged inconsistency in Cayetano's testimony refers only to a minor matter. It is inconsequential and does not impair his credibility.[36] In *People v. Prado*,[37] this Court held:

Inconsistencies and discrepancies on minor details of the testimony of a witness serve instead to strengthen his credibility as they are

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[32] *Id.* at 39.

[33] *Id.* at 40.

[34] *Id.* at 41.

[35] *People v. Cañizares*, 194 Phil. 283, 299 (1981), citing *People v. Sales*, G.R. No. L-29340, April 27, 1972, 44 SCRA 489.

[36] *People v. Ondalok*, G.R. Nos. 95682-83, May 27, 1997, 272 SCRA 631, 631.

[37] G.R. No. 112982, December 29, 1995, 251 SCRA 690.

badges of truth rather than indicia of falsehood. The most candid witnesses oftentimes make mistakes and fall into confused and inconsistent statements but such honest lapses do not necessarily affect their credibility. Far from eroding the effectiveness of the testimonies of the two witnesses, such trivial differences in fact constitute signs of veracity.[38]

We agree with the CA that the alleged inconsistency "only challenges the exact time when Cayetano gave his statement to the police."[39] The fact that Cayetano had conflicting accounts as to when he gave his statement to the police, does not in any way alter his testimony that appellant is one of the malefactors. He witnessed the crimes and had positively identified appellant.

Contrary to his claim, Cayetano specifically identified appellant as one of the assailants in his sworn affidavit before the police authorities. He even declared that he could also identify the other two suspects in case he sees them again.[40] Cayetano confirmed this on the witness stand, thus:

A: I turned my back and I saw my two (2) companions fell down with blood, Sir.

Q: Were those shots successive?
A: Yes, Sir.

Q: When you turned your back you saw the two (2) victims slumped on the ground?
A: Yes, Sir.

Q: What else did you see aside from the two victims slumped on the ground?
A: I saw the three (3) persons who shot them, Sir.

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[38] *People v. Prado, id.* at 697.

[39] *Rollo,* p. 11.

[40] Exh. "A": "T: *Nakilala mo ba kung sino ang mga taong sinasabi mong bumaril?*

S: *Ang isa po ay si Warren dela Cruz y Francisco na taga People's Village, Dampalit, Malabon, Metro Manila at ang kanyang dalawang kasamahan na kung aking makikita ay aking makikilala*."

Q: **Those three (3) persons who shot the victims, can you recognize them?**
A: **I only recognized one [but] I do not know the other two (2), Sir.**

Q: **You cannot recognize the two (2) persons who shot the victim[s]?**
A: **Yes, Sir.**

Q: **You said that you recognized the (*sic*) one, who is that person whom you recognized?**
A: **Warren dela Cruz, Sir.**

Q: **Will you please rise and point at him.**

(Witness pointed to a person inside the courtroom who when asked answered to the name Warren dela Cruz.)

Q: You said that you heard shots, did you also recognize the weapon used?
A: Yes, Sir, one (1) .45 and one (1) .38 caliber.

Q: And who was holding the .45 caliber firearm?
A: One of the companions of the accused Warren dela Cruz, Sir.

Q: **How about the .38 caliber revolver?**
A: **Warren dela Cuz, Sir.**[41] (Emphasis supplied)

Cayetano also testified that he had known appellant for a long time as a tricycle driver.[42] Thus, he could not have been mistaken with his identity. Nor is there any evidence that Cayetano was impelled by improper motives in pointing a finger at appellant as one of the culprits. The absence of evidence of improper motive tends to indicate that his testimony is worthy of full faith and credence.[43]

Self-serving denial cannot overthrow the positive identification that appellant was one of the perpetrators of the crime.[44] In

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[41] TSN, September 13, 2001, p. 4.

[42] *Id.* at 7.

[43] *Cosme, Jr. v. People*, G.R. No. 149753, November 27, 2006, 508 SCRA 190, 206-207, citing *People v. Dionisio*, 425 Phil. 616, 623 (1981).

[44] *People v. Peñaranda*, 194 Phil. 616, 623 (1981).

Ferrer v. People,[45] this Court reiterated the longstanding doctrine that denial —

> x x x is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserve more credence and evidentiary weight.[46]

The Court reaffirmed this doctrine in *Velasco v. People*,[47] where it was held that "[t]o be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit."

Appellant even admitted his presence at the scene of the crime when it was committed.[48] He admitted hiding from the clutches of the law for more than a year instead of reporting the matter to the police.[49] His flight is indicative of guilt.[50]

We are not unmindful of the testimony of appellant's mother, Julieta. We, however, give little weight to it because of the positive identification of Cayetano that her son is one of the culprits. More importantly, as a mother, Julieta cannot totally be considered as a disinterested witness. Her maternal instincts may impel her to protect her son at all cost, even to the point of prevarication.

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[45] G.R. No. 143487, February 22, 2006, 483 SCRA 31.

[46] *Ferrer v. People, id.* at 52.

[47] G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664.

[48] TSN, December 17, 2002, pp. 2-5.

[49] Records, pp. 5, 7 & 9.

[50] *People v. Tubongbanua,* G.R. No. 171271, August 31, 2006, 500 SCRA 727, 735, citing *People v. Pansensoy*, 437 Phil. 499, 518 (2002); *People v. Atadero,* 435 Phil. 888, 904 (2002).

Treachery qualified the killings to murder; treachery absorbs abuse of superior strength. Appellant argues that treachery was not present in the commission of the crime. He claims that the prosecution failed to present any positive proof that he has resolved to commit the crime. There was no proof that the death of the victims was the result of mediation, calculation or reflection.[51]

We hold otherwise. There is treachery when the offender commits the crime employing means, methods or forms of execution thereof which tend directly and specifically to ensure its execution without risk to himself arising from the defense which the victim might make.[52] The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberate or consciously adopted.[53]

Here, Danilo and Felix were shot from behind while they were innocently walking on their way to the cockpit arena in Dampalit, Malabon. They were unaware of the impending death that awaited them. In fact, they were unarmed. They were shot unceremoniously. The absence of warning denied them the opportunity to defend themselves or retaliate. Treachery was clearly present.

Records also show that the malefactors were all armed while Danilo and Felix were not.[54] There was abuse of superior strength.[55] However, as the RTC and CA correctly held, abuse

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[51] *Rollo,* p. 39.

[52] Revised Penal Code, Art. 14(16); *People v. Lunar,* 150-A Phil. 466, 490 (1972).

[53] *Concepcion v. People,* G.R. No. 167135, November 27, 2006, 508 SCRA 271, 278.

[54] TSN, November 17, 2002, pp. 2-4, 6-8; TSN, September 13, 2001, pp. 2-8.

[55] *U.S. v. Tandoc,* 40 Phil. 954, 957-958 (1920); *People v. Caroz,* 68 Phil. 521, 527 (1939).

of superior strength is absorbed in treachery. Pursuant to this Court's ruling in *People v. Ellado*,[56] abuse of superior strength can no longer be separately considered as an aggravating circumstance.

There is no violation of appellant's right to information. Appellant also argues that he was denied due process of law. He claims that even if he is found guilty, the qualifying circumstance of treachery, evident premeditation and abuse of superior strength alleged in the two Informations should not be appreciated against him because they were not specified in ordinary and concise language sufficient to enable a person of common understanding to know what those qualifying circumstances were.[57]

Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure provide:

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

This Court interpreted the above sections in *People v. Aquino*,[58] as requiring simply that the Information enumerate the attendant circumstances mentioned in the law to qualify the

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[56] G.R. No. 124686, March 5, 2001, 353 SCRA 643, citing *People v. Sanchez,* G.R. No. 118423, June 16, 1999, 308 SCRA 264, 286.

[57] *Rollo,* p. 39.

[58] 435 Phil. 417 (2002).

offense. It is sufficient that these circumstances are specified in the Information to apprise the accused of the charge. Said the Court:

> The use of the words "aggravating/qualifying circumstances" will not add any essential element to the crime. Neither will the use of such words further apprise the accused of the nature of the charge. The specific allegation of the attendant circumstance in the Information, coupled with the designation of the offense and a statement of the acts constituting the offense as required in Sections 8 and 9 of Rule 110, is sufficient to warn the accused x x x.
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> x x x x x x x x x
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> Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher category, need not be stated in the language of the law. With more reason, the words "aggravating/qualifying circumstances" as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.
>
> x x x x x x x x x
>
> We therefore reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these 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 the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.
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> x x x x x x x x x

To guide the bench and the bar, this Resolution clarifies and resolves the issue of how to allege or specify qualifying or aggravating circumstances in the Information. The words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated as long as the particular attendant circumstances are specified in the Information.[59] (Citations omitted)

A reading of the allegations in the two Informations[60] against appellant and his co-accused are very clear. These allegations, once proven beyond reasonable doubt, qualify the killing of Danilo and Felix to murder. It would be an unreasonable burden for the prosecution if it is required to do more.

All told, We hold that appellant was properly convicted of murder and sentenced to *reclusion perpetua* in each case. We, however, find that an award of exemplary damages in the amount of ₱25,000.00 a piece to the heirs of Danilo and Felix is proper. Exemplary damages are awarded, as here, when treachery attended commission of the crime.[61]

WHEREFORE, the appealed decision of the Court of Appeals is *AFFIRMED* but *MODIFIED* in that appellant is also liable to pay the heirs of the victims exemplary damages in the amount of ₱25,000.00 apiece.

SO ORDERED.

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

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[59] *People v. Aquino, id.* at 422-427.

[60] *Rollo,* pp. 4-5.

[61] *People v. Malinao,* G.R. No. 128148, February 16, 2004, 423 SCRA 34; *People v. Ibañez,* G.R. Nos. 133923-24, July 30, 2003, 407 SCRA 406, 430, citing *People v. Bernal,* G.R. Nos. 132791 & 140465-66, September 2, 2002, 388 SCRA 211; *People v. Escote, Jr.,* G.R. No. 140756, April 4, 2003, 400 SCRA 603, citing *People v. Catubig,* G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

THIRD DIVISION

[G.R. No. 180730. December 11, 2008]

CARLOS GONZALEZ, *petitioner, vs.* **HON. JUDGE MERCEDES POSADA LACAP, Regional Trial Court, Branch 15, Manila City; and ESTRELLA G. MEDRANO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ISSUES IN CASE AT BAR CAN BEST BE PASSED UPON AND THRESHED OUT DURING A FULL-BLOWN TRIAL.— It is axiomatic that the nature of the action, the jurisdiction of the court, and the law to govern the case are determined by the complaint itself, its allegations and prayers for relief, not by the defenses raised in the answer or motion to dismiss, and irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein. In this case, plaintiff-respondent asserted in her complaint that the subject properties were owned by her parents but registered in defendant-petitioner's name only as a trustee, and that the house built thereon also belonged to their parents and was, in fact, regarded by all the siblings as their ancestral house. Such regard for the subject properties was disclaimed by defendant-petitioner when, in 2005, she refused entry to plaintiff-respondent and her family. Plaintiff-respondent's prayer in the said complaint included not only the reconveyance of the 1/7 portion of the property but also the partition of the said realties. However, it is observed that based on the said allegations, the action could still be treated as one for partition or for reconveyance, although it appears to be more in the nature of an action for partition, with reconveyance of the 1/7 claimed share of plaintiff-respondent only as one of the reliefs sought. Nevertheless, the issues joined during the pre-trial of the case readily reveal that they are factual and evidentiary, which can best be passed upon and threshed out during a full-blown trial. To deny plaintiff-respondent the right to present evidence constitutes a denial of due process, as there are issues therein that cannot be resolved without adducing evidence, and this can be done only through a full-blown trial of the case on the merits.

APPEARANCES OF COUNSEL

Napoleon Uy Galit and Associates Law Offices for petitioner.
Ongsiako Dela Cruz Bautista Antonio Timtiman for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is a Petition[1] for *certiorari* under Rule 65 of the Rules of Court assailing the Order[2] dated August 28, 2007 and the Order[3] dated October 16, 2007 of the Regional Trial Court (RTC), Branch 15, Manila, in Civil Case No. 06-115100 entitled *Estrella G. Medrano v. Zenaida B. Gonzalez.*

The antecedent facts are as follows:

Plaintiff Estrella G. Medrano and defendant Zenaida B. Gonzalez are sisters, being the daughters of Spouses Conrado B. Gonzalez and Miguela B. Gonzalez (now both deceased). On May 19, 2006, plaintiff filed a Complaint[4] against defendant alleging, among others, that:

x x x x x x x x x

3. On 10 January 1953, Spouses Conrado and Miguela Gonzalez, bought, out of their conjugal funds, two (2) parcels of land (Lot No. 11 and Lot No. 13) which were then covered by TCT No. 19593/T-372. A Transfer Certificate of Title No. 31206 was issued under the name of one of their children, herein Defendant Zenaida B. Gonzalez. Copy of said Transfer Certificate of Title is hereto attached and marked as Annex "A";

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[1] *Rollo*, pp. 3-25.

[2] *Id.* at 26.

[3] *Id.* at 44.

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

4. Thereafter, or on 14 August 1957, Spouses Conrado and Miguela Gonzalez bought the remaining lots described in TCT No. 19593/T-372. Again, the subject lots were placed under the name of herein Defendant Zenaida B. Gonzalez as shown by TCT Nos. 48477 and 48478. Copy of said Transfer Certificates of Titles are hereto attached and marked as Annexes "B" and "C", respectively;

5. At the time the aforementioned Deeds of Sale were executed, the intention of the buyers is that herein defendant will only be considered as trustee while the Spouses Gonzalez, being the real buyers, hold the beneficial interest over the said properties;

6. In fact, the improvements made on the subject lot, which likewise came from the spouses' conjugal funds, remain to be the residence of one of the brothers of herein parties, Asterio Gonzalez, and his family. Also, whenever Plaintiff and her family, or any other sibling, would visit the Philippines, they would stay in the said ancestral house;

7. During the lifetime of Spouses Conrado and Miguela, and until the time of their death, there was never an intention on their part to have the subject properties transferred solely to Defendant Zenaida Gonzalez. The residential house built on the said land remains to be the ancestral house of the family;

8. However, sometime in March 2005, plaintiff Medrano and her family went to the Philippines for a vacation.[5] As always, they proceeded to their ancestral house in Instruccion, Sampaloc. But to her great surprise, they were not allowed to stay there, much less come in, as herein defendant claims sole ownership over the subject property, to the exclusion of the other siblings. To date, defendant continues to refuse plaintiff's entry to the said property despite several repeated demands;

9. Defendant's claim is malicious, baseless and unfounded. As previously stated, the aforesaid properties were owned by their parents, Spouses Conrado and Miguela. As such, after the death of the latter, Plaintiff Estrella became a

[5] They are residents of California, USA.

successor-in-interest by operation of law, to the extent of 1/7 of the entire property.[6]

Plaintiff prayed that the RTC, after trial, issue an Order —

1. Declaring that 1/7 of the property described in Transfer Certificates of Title Nos. 31206, 48477 and 48478, together with all the improvements thereon, belong to plaintiff Estrella Medrano;
2. Ordering the partition of the afore-described properties;
3. Directing the reconveyance and transfer of 1/7 part of the aforementioned property in the name of the plaintiff.[7]

She also prayed that defendant be directed to pay her ₱200,000.00 as attorney's fees, ₱500,000.00 as moral damages, ₱500,000.00 as exemplary damages, litigation expenses, and the costs of suit.[8]

In her Answer,[9] defendant denied the allegations in the complaint claiming that the subject properties are owned exclusively by her; that plaintiff admitted in a Deed of Extra-Judicial Settlement that the only property left by their deceased parents was a parcel of land located in Quezon City and did not include defendant's duly registered real properties; that the right of action of plaintiff had already prescribed, the complaint being one for reconveyance; and that plaintiff was already barred by laches.

On September 2, 2006, defendant executed a Deed of Assignment[10] in favor of her elder brother Carlos B. Gonzalez over the subject properties, including a parcel of land in Nueva Ecija covered by TCT No. NT-29578.

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[6] *Rollo*, pp. 45-46.

[7] *Id.* at 47.

[8] *Id.* at 47-48.

[9] *Id.* at 59-67.

[10] *Id.* at 68-71.

On October 12, 2006, defendant filed a Motion for Substitution[11] alleging that, due to financial constraints occasioned by her medical and hospitalization needs, she had sold her properties subject of the case to Carlos B. Gonzalez and prayed that she be substituted by her aforesaid brother as defendant. The RTC granted the Motion in its Order[12] dated December 14, 2006.

Pre-trial was conducted. The Pre-Trial Order[13] dated June 21, 2007 states that the issues agreed upon by the parties are —

1. Whether or not the properties covered by TCT Nos. 31206, 48477 and 48478 are owned by the parties' parents.
2. Whether or not plaintiff is entitled to her 1/7 share of these three (3) properties with all the improvements thereon.
3. Whether or not the partition of these properties should be ordered by the Court.
4. Whether or not plaintiff is entitled to the reconveyance of her 1/7 share in the subject properties.
5. Whether or not plaintiff is entitled to damages.
6. Whether or not the Deed of Assignment filed by Carlos Gonzalez and counsel is a falsified document.
7. Whether or not the pendency of this falsification case filed against Carlos Gonzalez and counsel would constitute a prejudicial question.
8. Whether or not the plaintiff has a cause of action against the defendant.
9. Whether or not prescription had already set in.
10. Whether or not laches had set in.
11. Whether or not this present complaint could prosper, it being a collateral attack to defendant's title.

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[11] *Id.* at 72-74.

[12] *Id.* at 75.

[13] *Id.* at 80-85.

12. Whether or not plaintiff is guilty of forum shopping.

13. Whether or not defendant is entitled to his counterclaim.[14]

On July 9, 2007, defendant filed a Manifestation and Motion praying for a preliminary hearing on her defenses of prescription, laches, estoppel, and forum shopping. This was opposed by the plaintiff.[15]

In the assailed Order[16] dated August 28, 2007, the RTC denied the motion, ratiocinating —

> Considering that the question of whether or not this case had already prescribed hinges into the very issue of whether this case is an action for partition or an action for reconveyance, this Court is in the opinion that the issues raised can be best ventilated in the actual trial of this case.

Defendant moved for reconsideration, but was again denied by the RTC in its Order[17] dated October 16, 2007. Hence, this petition.

The position of the RTC is well taken.

It is axiomatic that the nature of the action, the jurisdiction of the court, and the law to govern the case are determined by the complaint itself, its allegations and prayers for relief, not by the defenses raised in the answer or motion to dismiss, and irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[18]

In this case, plaintiff-respondent asserted in her complaint that the subject properties were owned by her parents but

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[14] *Id.* at 82.

[15] Opposition/Comment; *id.* at 110-113.

[16] *Rollo*, p. 26.

[17] *Id.* at 44.

[18] *Quinagoran v. Court of Appeals*, G.R. No. 155179, August 24, 2007, 531 SCRA 104, 113-114; *Baltazar v. Ombudsman*, G.R. No. 136433, December 6, 2006, 510 SCRA 74, 89-90; *Pascual v. Beltran*, G.R. No. 129318, October 27, 2006, 505 SCRA 545.

registered in defendant-petitioner's name only as a trustee, and that the house built thereon also belonged to their parents and was, in fact, regarded by all the siblings as their ancestral house. Such regard for the subject properties was disclaimed by defendant-petitioner when, in 2005, she refused entry to plaintiff-respondent and her family. Plaintiff-respondent's prayer in the said complaint included not only the reconveyance of the 1/7 portion of the property but also the partition of the said realties.

However, it is observed that based on the said allegations, the action could still be treated as one for partition or for reconveyance, although it appears to be more in the nature of an action for partition, with reconveyance of the 1/7 claimed share of plaintiff-respondent only as one of the reliefs sought. Nevertheless, the issues joined during the pre-trial of the case readily reveal that they are factual and evidentiary, which can best be passed upon and threshed out during a full-blown trial.[19] To deny plaintiff-respondent the right to present evidence constitutes a denial of due process, as there are issues therein that cannot be resolved without adducing evidence, and this can be done only through a full-blown trial of the case on the merits.[20]

WHEREFORE, the Petition is *DISMISSED* for lack of merit. No pronouncement as to costs.

SO ORDERED.

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

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[19] *De Chavez v. Ombudsman*, G.R. Nos. 168830-31, February 6, 2007, 514 SCRA 638, 657.

[20] *Simon v. Canlas*, G.R. No. 148273, April 19, 2006, 487 SCRA 433, 450.

SECOND DIVISION

[A.M. No. CA-08-23-P. December 16, 2008]
(Formerly A.M. OCA IPI No. 05-79-CA-P)

JANETTE P. GABATIN, *complainant, vs.* **MARILOU M. QUIRINO, Court Stenographer IV, Court of Appeals,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT FOR COURT PERSONNEL; RESPONDENT'S ACT OF PLACING HER PERSONAL INTEREST OVER THE INTEREST OF HER OFFICE RESULTED IN PREJUDICE TO PUBLIC SERVICE; COURT PERSONNEL SHALL COMMIT THEMSELVES EXCLUSIVELY TO THE BUSINESS AND RESPONSIBILITIES OF THEIR OFFICE DURING WORKING HOURS.— We find it clear from the records that respondent violated Section 1 of Canon IV of the Code of Conduct for Court Personnel. This Section provides: Court personnel shall at all times perform official duties properly and with diligence. **They shall commit themselves exclusively to the business and responsibilities of their office during working hours.** As Justice Villon found, the respondent must have spent several hours of official time dealing with the complainant from their first encounter during office hours sometime in August 2004, to their meetings at the respondent's workplace (RTC, Branch 210, Mandaluyong City, later at the CA. In these private meetings during official time, the respondent placed her personal interest over the interest of her office. This could not have but resulted in prejudice to public service, specifically, to service to the RTC and later to the CA.

2. ID.; ID.; ID.; RESPONDENT ALSO EXHIBITED CONDUCT UNBECOMING OF A COURT PERSONNEL.— While the respondent's personal liability with the complainant can only be fully ascertained and resolved in an appropriate criminal or civil proceeding, we agree with the Investigating Justice that the respondent's handling of the entire affair had not been exemplary. We are convinced that the respondent gave the complainant a "run-around" instead of being forthright with

her in explaining her failure to secure the promised franchise. The best examples, to our mind, were the respondent's dissembling excuses and her failure to inform the complainant that she had already transferred to the CA. Thus, aside from violating Section 1, Canon IV of the Code of Conduct for Court Personnel, the respondent also exhibited conduct unbecoming a court personnel. As we held in *Zenaida C. Gutierrez, et al. v. Rodolfo Quitalig:* Employees of the judiciary x x x should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community. The image of the court, as being a true temple of justice, is aptly mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowliest of its personnel. The respondent's acts fell short of these exacting standards expected of public officials and employees. Every public servant, it is well to remind the respondent, is enjoined to uphold public interest over and above personal interest at all times. For her transgressions as a member of the civil service, respondent must be made to suffer the appropriate sanction.

3. **ID.; ID.; ID.; RESPONDENT IS LIABLE FOR SIMPLE MISCONDUCT; PENALTY OF TWO-MONTH SUSPENSION IS APPROPRIATE UNDER THE CIRCUMSTANCES. —** We find Justice Villon's recommendation to hold the respondent liable for simple misconduct to be in order. Simple misconduct is a less grave offense under Section 56 B (2) of the Revised Uniform Rules on Administrative Cases in the Civil Service, which carries a penalty for the first offense of suspension of one (1) month and one (1) day to six (6) months. Instead of the one month penalty that Justice Villon recommended, however, we believe and so hold that a **two-month suspension** is more appropriate under the circumstances. While the respondent is a first offender who readily admitted her receipt of the sum paid to her, she is as well an employee of the Judiciary who conducted her private transactions within court premises during office hours, thus placing the court in a negative light. Because of this effect, she cannot have the benefit of the minimum of the imposable penalty, although the penalty must still be within the lower half of the range to take the mitigating circumstances into account.

D E C I S I O N

BRION, *J.*:

For our Decision is the administrative complaint[1] dated February 28, 2005 filed by Janette P. Gabatin (*complainant*) against Marilou M. Quirino (*respondent*)[2] for conduct unbecoming a court employee. We referred the case to the Court of Appeals (*CA*) for investigation and report[3] upon recommendation of the Office of the Court Administrator (*OCA*).[4] The case was raffled to CA Justice Sesinando E. Villon (*Justice Villon*).

THE ANTECEDENT FACTS

In 2004, the complainant acquired a passenger-type jeepney which she wanted to use as a public utility jeepney (*PUJ*). To do this, she needed to license and register the vehicle as a public utility vehicle (*PUV*).

Sometime in August 2004, the complainant was introduced by one "Josie" to the respondent who was then employed at the Regional Trial Court (*RTC*), Branch 210, Mandaluyong City. The respondent informed the complainant that she was engaged in securing PUV franchises for a fee and offered complainant her services. The complainant accepted the offer.

On September 13, 2004, during office hours, the complainant met the respondent in a restaurant in Mandaluyong City where she handed to the respondent ₱50,000.00 in cash as initial payment for securing a PUV franchise, ₱500.00 for notarization, and the papers required for the processing of the franchise application. The respondent issued to the complainant an acknowledgment

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[1] *Rollo,* pp. 1-5.

[2] Whose real name is Wennie M. Quirino per Letter dated May 8, 2006 of Investigating Justice Sesinando E. Villon, *id.,* pp. 125-126.

[3] Resolution dated December 14, 2005; *id.,* p. 81.

[4] *Id.,* p. 80.

receipt dated September 13, 2004,[5] as well as a Deed of Absolute Sale.[6] The respondent promised to secure for the complainant her PUV franchise in one month's time after which the complainant was to pay the balance of ₱20,000.00 for the completed transaction.

On October 5, and 13, 2004, the complainant followed up on the progress of the transaction, but the respondent told her on both occasions that the Land Transportation Franchising and Regulatory Board (*LTFRB*) had not scheduled a hearing on the matter and that the franchise was not yet available.

On October 15, 2004, the complainant went to see the respondent at her place of work to get her money back because of respondent's failure to secure a franchise as agreed. Instead of returning the money, the respondent requested the complainant to enter into another agreement, *i.e.*, to "re-contract," with her. Under the "re-contract," the respondent would have another month or until November 17, 2004 to secure the franchise. The complainant acceded to the respondent's request. Accordingly, respondent issued another acknowledgment receipt dated October 15, 2004.[7]

On November 17, 2004, the complainant asked the respondent if she had secured the franchise; the latter replied in the negative. Again, the respondent requested a "re-contract," this time up to the end of November. She also informed the complainant that there was already an "update" on the franchise. The complainant again acceded to the request.

Thereafter, the complainant consistently prodded the respondent to comply with her commitment to secure the promised franchise, but all for naught. Despite repeated demands, the respondent failed to secure the franchise; neither did she return the money the complainant gave her. This prompted the complainant to hire the services of a lawyer who sent the respondent a letter

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[5] Annex "B", Complaint; *id.*, pp. 7-8.

[6] Annex "C"; *id.*, p. 9.

[7] Annex "D"; *id.*, p. 11.

dated December 29, 2004[8] demanding the delivery of the PUJ franchise or the return the amount of ₱50,000.00 plus interest and damages, within three (3) days from receipt of the letter.

In reply,[9] respondent told the lawyer that the complainant's money was still intact but asked for time to return it. Notwithstanding the extension given, the respondent failed to return the money.

The complainant alleged that the respondent took advantage of her ignorance (as she was a mere high school graduate) in convincing her that she (the respondent) could secure a franchise for her. Until the day she filed the complaint (or about seven [7] months from the time she paid the respondent), the latter had not shown any result even in terms of documents filed to secure the franchise. The complainant even refused, despite repeated demands, to return the complainant's money. The complainant argued that this refusal alone already constituted serious misconduct and conduct unbecoming of a court personnel. She further argued that the misrepresentations, alibis and other evasive tactics the respondent used to avoid returning her money, are actionable wrongs.

The complainant also bewailed the run-around that the respondent gave her by failing to disclose to her that she (the respondent) had transferred to the CA. She claimed that had she not made a search of the respondent's whereabouts, she could not have known that respondent had transferred to the CA.

In her Comment dated March 23, 2005,[10] the respondent denied the accusations against her, specifically the charge that she took advantage of the complainant's ignorance. She countered that she did not represent to the complainant that she had the capacity to secure a PUV franchise and that she had not dealt with the complainant or with any other persons during office hours to pursue a "sideline."

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[8] Annex "E"; *id.*, p. 12.

[9] Annex "F"; *id.*, pp. 13-15.

[10] *Id.*, pp. 20-24.

The respondent admitted that "Josie," a common friend introduced her to the complainant sometime in 2004. At this meeting, she told the complainant that: she was securing a franchise with the LTFRB for her three (3) units of passenger jeepneys; she and her husband applied for an extension of the validity of the certificate of public convenience for one of their units with Plate No. NSF-173; and that this franchise was the subject of the respondent's transaction with the complainant.

The respondent also admitted receipt of ₱50,000.00 from the complainant to be used in securing a franchise for the latter's passenger jeepney. The amount was to cover the processing fee, attorney's fee, surveys and LTFRB hearings. She claimed that: the complainant agreed to the condition that if no franchise was issued in her favor after one month, she had the option to get her money back; the sale of the franchise would be considered null and void, revoked or cancelled; and that she did not assure complainant that she could secure the franchise. She admitted that she accepted the complainant's request to buy her existing franchise.

The respondent denied that she had refused to return complainant's money, but admitted that she had asked for time to do this as she had used part of the money for the franchise application, publication, service, filing fees and related expenses. On the allegation that the complainant had difficulty looking for her, the respondent explained that she had instructed her former officemates at the Mandaluyong RTC to give her telephone number to whoever would look for her.

The complainant disputed the respondent's allegations in a Reply dated April 11, 2005.[11] She insisted that the respondent had no intention of returning her money, stressing that no return had been made up to that time. She suspected that respondent had used the money for a purpose other than what they agreed upon. The complainant drew particular attention to the respondent's evasiveness; the respondent even told her at one time that she would be transferring to Baguio and not to the CA.

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[11] *Id.*, pp. 71-73.

The complainant (assisted by counsel) and the respondent (by herself) appeared before the investigating officer, Justice Villon at the hearing on June 26, 2006. The complainant's counsel manifested that she was submitting the case for resolution on the basis of the pleading already filed together with the documents or annexes attached to the complaint.[12] The respondent likewise manifested her willingness to submit the case for resolution without further presentation of evidence and her intent to submit a memorandum.[13] Significantly, the respondent again admitted that she received the amount of ₱50,000.00 from the complainant.

When it appeared at the hearing of June 27, 2006 that the parties would not present additional evidence, Justice Villon required them to submit their respective memoranda within five (5) days, with the case thereafter deemed submitted for resolution.

The complainant filed her memorandum[14] on July 3, 2006 and at the same time informed the Investigating Justice that the respondent had not returned the ₱50,000.00 nor delivered the franchise to her. The respondent failed to submit any memorandum.

REPORT OF THE INVESTIGATING JUSTICE

Justice Villon submitted a Report and Recommendation dated July 11, 2006.

Based on his appreciation of the case, particularly the acts complained of, Justice Villon concluded that the respondent had been remiss in her duty as a court employee. He noted that the respondent failed to devote her time exclusively to her official duties because she had often dealt with the complainant during office hours on the transaction complained of. He also noted that the complainant had made frequent calls to the respondent to verify the status of the franchise, with the two entering into

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[12] TSN of June 26, 2006, p. 9; *id.*, p. 136.

[13] *Id.*, p. 138.

[14] *Rollo,* pp. 102-109.

at least two (2) "re-contracts" to give the respondent time to obtain the promised franchise. These activities, the Investigating Justice observed, are not part of the duties of a court employee and their conduct during office hours is the practice this Court "abhorred" in *Luz C. Adajar v. Teresita O. Develos, et al.*[15]

The report also found the respondent at fault when she failed to return the ₱50,000.00 she received from the complainant after she failed to secure the franchise she committed to deliver. While this is unjustifiable and cannot be countenanced, the Investigating Justice also observed that the recovery of the amount is appropriate in a criminal or civil proceeding, not in an administrative case.

Justice Villon recommended that the respondent be held liable for simple misconduct with the corresponding penalty of suspension for one month. Justice Villon considered as mitigating the complainant's admission that she received the ₱50,000.00 from complainant; her commitment to return the money on installment basis; her apparent lack of malice or bad faith in dealing with the complainant; and the fact that this is her first offense.

THE COURT'S RULING

We find it clear from the records that respondent violated Section 1 of Canon IV of the Code of Conduct for Court Personnel.[16] This Section provides:

> Court personnel shall at all times perform official duties properly and with diligence. **They shall commit themselves exclusively to the business and responsibilities of their office during working hours.** *[underscoring supplied]*

As Justice Villon found, the respondent must have spent several hours of official time dealing with the complainant from their first encounter during office hours sometime in August 2004,

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[15] A.M. No. P-05-2056, November 18, 2005, 475 SCRA 361.

[16] A.M. No. 03-06-13-SC, promulgated April 13, 2004; took effect June 1, 2004.

to their meetings at the respondent's workplace (RTC, Branch 210, Mandaluyong City, later at the CA. In these private meetings during official time, the respondent placed her personal interest over the interest of her office. This could not have but resulted in prejudice to public service, specifically, to service to the RTC and later to the CA.

While the respondent's personal liability with the complainant can only be fully ascertained and resolved in an appropriate criminal or civil proceeding, we agree with the Investigating Justice that the respondent's handling of the entire affair had not been exemplary. We are convinced that the respondent gave the complainant a "run-around" instead of being forthright with her in explaining her failure to secure the promised franchise. The best examples, to our mind, were the respondent's dissembling excuses and her failure to inform the complainant that she had already transferred to the CA. Thus, aside from violating Section 1, Canon IV of the Code of Conduct for Court Personnel,[17] the respondent also exhibited conduct unbecoming a court personnel. As we held in *Zenaida C. Gutierrez, et al. v. Rodolfo Quitalig:*[18]

> Employees of the judiciary x x x should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community. The image of the court, as being a true temple of justice, is aptly mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowliest of its personnel.

The respondent's acts fell short of these exacting standards expected of public officials and employees. Every public servant, it is well to remind the respondent, is enjoined to uphold public interest over and above personal interest at all times.[19] For her

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[17] *Id.*

[18] 448 Phil. 469 (2003).

[19] Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act No. 6713, Section 4 (a).

transgressions as a member of the civil service, respondent must be made to suffer the appropriate sanction.

We find Justice Villon's recommendation to hold the respondent liable for simple misconduct to be in order. Simple misconduct is a less grave offense under Section 56 B (2) of the Revised Uniform Rules on Administrative Cases in the Civil Service,[20] which carries a penalty for the first offense of suspension of one (1) month and one (1) day to six (6) months. Instead of the one month penalty that Justice Villon recommended, however, we believe and so hold that a **two-month suspension** is more appropriate under the circumstances. While the respondent is a first offender who readily admitted her receipt of the sum paid to her, she is as well an employee of the Judiciary who conducted her private transactions within court premises during office hours, thus placing the court in a negative light. Because of this effect, she cannot have the benefit of the minimum of the imposable penalty, although the penalty must still be within the lower half of the range to take the mitigating circumstances into account.

WHEREFORE, premises considered, MARILOU M. QUIRINO, whose real name is WENNIE M. QUIRINO, is hereby held liable for SIMPLE MISCONDUCT. Accordingly, she is *SUSPENDED* from the service for *TWO (2) MONTHS WITHOUT PAY* 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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[20] Civil Service Commission Circular No. 19, s. 1999.

THIRD DIVISION

[A.M. No. P-06-2207. December 16, 2008]

MA. LOURDES V. AREOLA, Attorney-in-Fact of Praxedes Afficionado, *ET AL.*, *complainants, vs.* **OSCAR P. PATAG, Sheriff, Regional Trial Court, Branch 67, Binangonan, Rizal,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; NATURE OF DUTY REQUIRES HIGH DEGREE OF PROFESSIONALISM.— By the very nature of his duties, a sheriff performs a very sensitive function in the dispensation of justice. He is duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all time, show a high degree of professionalism in the performance of his duties. The sheriff is the front-line representative of the justice system in this country and if he loses the trust reposed in him, he inevitably diminishes, likewise, the faith of the people in the judiciary.

2. ID.; ID.; ID.; ID.; RESPONDENT WAS REMISS NOT ONLY IN THE IMPLEMENTATION OF THE WRIT BUT ALSO IN THE SUBMISSION OF THE RETURN OF THE WRIT OF EXECUTION.— As found by both the OCA and the Executive Judge, respondent was remiss not only in his implementation of the writ, but also in the submission of his return of the writ of execution. There is nothing on record to show that respondent made an estimate of the expenses to be incurred for the execution of the writ. Nor did he prepare an estimate to be approved by the court. There is also nothing on record to show that respondent made a return of the writ of execution within the period provided in Section 14 of Rule 39. It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason or reasons therefor. The officer is, likewise, tasked to make a report to the court every thirty (30) days on the proceedings taken thereon until judgment is satisfied in full or its effectivity expires.

3. ID.; ID.; ID.; COMPLAINT AGAINST RESPONDENT SHERIFF IS DISMISSED IN VIEW OF HIS DEATH BEFORE THE INVESTIGATING JUDGE OF THE OFFICE OF THE COURT ADMINISTRATOR COULD MAKE A FINDING OF HIS CULPABILITY.— Records reveal that on *April 6, 2006*, Atty. Jason O. Reyes, Clerk of Court, Office of the Clerk of Court, RTC, Binangonan, Rizal informed the OCA of the demise of respondent. Records further reveal that in her "*Ex Parte* Motion to Dismiss Administrative Case" dated *November 2, 2006*, complainant Areola herself prayed that the administrative case against respondent be dismissed and considered closed on the ground that she was reliably informed that respondent is already dead. This is not the first time that a respondent in an administrative case died during its pendency. In some cases, the death occurred either before respondent could submit a comment on the complaint, before an investigation could be conducted, or before the investigating judge or the OCA could make a finding on the culpability of respondent. In *Apiag v. Cantero*, the investigation against respondent for gross misconduct had already been terminated, and the investigating judge and the OCA had already made a finding on the charge and recommended respondent's suspension and dismissal from the service, respectively; but respondent died while his case was being deliberated upon by the Court. In all these instances, the Court ordered the dismissal of the cases and did not see it fit to impose a penalty on respondents. Similarly, in view of the death of respondent Sheriff Oscar P. Patag before the investigating judge or the OCA could make a finding on his culpability, this Court finds it inappropriate to impose a sanction upon him.

APPEARANCES OF COUNSEL

Ma. Lourdes V. Areola for complainants.

R E S O L U T I O N

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

THE instant administrative complaint is one for grave misconduct against Oscar P. Patag, Sheriff, Regional Trial Court (RTC), Branch 67, Binangonan, Rizal, relative to the

implementation of a writ of execution in Civil Case No. 04-045.

In a verified complaint[1] dated August 7, 2005, Ma. Lourdes V. Areola averred that, on November 3, 2004, the Municipal Trial Court, Branch 2, Binangonan, Rizal rendered judgment in favor of plaintiffs Mercedes Afficionado (*a.k.a.* Baby Girlie Bonus) and Praxedes Afficionado in Civil Case No. 04-045 for unlawful detainer. On November 30, 2004, on behalf of plaintiffs, she filed a motion for the execution of the decision and the same was granted by the court. A writ of execution was issued on March 7, 2005. This was received by respondent on April 13, 2005.

According to complainant, respondent failed to execute the writ of execution on time and failed to make the necessary return thereon. She alleged that the writ was executed only on July 13, 2005. Furthermore, she alleged that respondent disobeyed the directives in the writ when he allowed spouses Santiago and Frank Lagrameda to occupy the premises awarded to plaintiffs in the unlawful detainer case.

In his comment[2] dated September 7, 2005, respondent denied the material allegations of the complaint. He averred that the delay in the implementation of the writ was mainly due to the fault of complainant's principals since they paid the fees for the implementation only on July 13, 2005. He also averred that immediately upon payment of the fees, he proceeded to the subject premises to implement the writ, accompanied by Praxedes Afficionado and her grandchildren. He delivered the possession of the premises and issued delivery possession on the same date.

As regards the charge that he allowed the entry of spouses Santiago and Frank Lagrameda into the premises, respondent averred that the property was not covered by the writ nor is it a subject matter in Civil Case No. 04-045. He stressed that the

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[1] *Rollo,* pp. 2-10.

[2] *Id.* at 43-46.

property is the subject matter of Civil Case No. 01-035 entitled "*Mercedes Concepcion Afficionado, et al. v. Annabelle Rivera Tipones*," which was raffled to RTC, Branch 70, Binangonan, Rizal and was dismissed on June 15, 2005.

On July 26, 2006, this Court issued a Resolution[3] referring the instant administrative matter to the Executive Judge, RTC, Binangonan, Rizal for investigation, report and recommendation.

In his Report dated **December 11, 2006**, Executive Judge Narmo P. Noblejas found respondent guilty of neglect and recommended that respondent be meted a ₱3,000.00 fine.[4] The Executive Judge held that "respondent's excuse or explanation that the principals paid the court fees only on July 13, 2005 is unavailing because he could have advised them to pay the corresponding fees. Likewise, he could have prepared an estimate of expenses for court approval under Rule 141 and, if not paid, for him to make a return to the court pursuant to Section 14 of Rule 39 of the Revised Rules of Court."[5]

The matter was, thereafter, referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[6]

In its Memorandum dated **March 26, 2007**, the OCA echoed the findings of the Executive Judge and recommended that respondent "be found guilty of neglect of duty and be fined in the amount of ₱3,000.00 to be deducted from his terminal leave credits or other benefits which he may receive from the Court."[7] It noted that respondent "could not be held liable for grave misconduct as charged because there is no showing that he acted with malice or intentional wrong doing in delaying the execution of the writ."[8]

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[3] *Rollo,* pp. 67-68.

[4] See Report of Executive Judge Narmo P. Noblejas, p. 6.

[5] *Id.* at 5.

[6] See this Court's Resolution dated January 24, 2007.

[7] See OCA's Memorandum dated March 26, 2007, p. 4.

[8] *Id.* at 3.

By the very nature of his duties, a sheriff performs a very sensitive function in the dispensation of justice.[9] He is duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all time, show a high degree of professionalism in the performance of his duties.[10] The sheriff is the front-line representative of the justice system in this country and if he loses the trust reposed in him, he inevitably diminishes, likewise, the faith of the people in the judiciary.[11]

As found by both the OCA and the Executive Judge, respondent was remiss not only in his implementation of the writ, but also in the submission of his return of the writ of execution.[12] There is nothing on record to show that respondent made an estimate of the expenses to be incurred for the execution of the writ. Nor did he prepare an estimate to be approved by the court. There is also nothing on record to show that respondent made a return of the writ of execution within the period provided in Section 14 of Rule 39.

It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason or reasons therefor. The officer is, likewise, tasked to make a report to the court every thirty (30) days on the proceedings taken thereon until judgment is satisfied in full or its effectivity expires.[13]

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[9] *Sexton v. Casida*, A.M. No. P-05-2048, September 30, 2005, 471 SCRA 168, 174; *Espina v. Gato*, A.M. No. P-02-1580, April 9, 2003, 401 SCRA 40, 45.

[10] *Andal v. Tonga*, A.M. No. P-02-1581, October 28, 2003, 414 SCRA 524, 531.

[11] *Meneses v. Zaragosa*, A.M. No. P-04-1768, February 11, 2004, 422 SCRA 434, 447; *Camsa v. Rendon*, A.M. No. MTJ-02-1395, March 28, 2003, 400 SCRA 1, 8.

[12] See OCA's Memorandum dated March 26, 2007, p. 3, and Report of Executive Judge Narmo P. Noblejas, p. 5.

[13] *Arevalo v. Loria*, A.M. No. P-02-1600, April 30, 2003, 402 SCRA 40, 48.

However, records reveal that on **April 6, 2006**, Atty. Jason O. Reyes, Clerk of Court, Office of the Clerk of Court, RTC, Binangonan, Rizal informed the OCA of the demise of respondent.[14] Records further reveal that in her "*Ex Parte* Motion to Dismiss Administrative Case"[15] dated **November 2, 2006**, complainant Areola herself prayed that the administrative case against respondent be dismissed and considered closed on the ground that she was reliably informed that respondent is already dead.

This is not the first time that a respondent in an administrative case died during its pendency. In some cases, the death occurred either before respondent could submit a comment on the complaint,[16] before an investigation could be conducted, or before the investigating judge or the OCA could make a finding on the culpability of respondent.[17] In *Apiag v. Cantero*,[18] the investigation against respondent for gross misconduct had already been terminated, and the investigating judge and the OCA had already made a finding on the charge and recommended respondent's

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[14] See OCA's Memorandum dated March 26, 2007, p. 2.

[15] See Complainant's "*Ex Parte* Motion to Dismiss Administrative Case against Sheriff Oscar P. Patag," p. 1.

[16] *Report on the Judicial Audit Conducted in the Municipal Trial Court of Tambulig*, A.M. No. MTJ-05-1573, October 12, 2005, 472 SCRA 419, 430, citing *Report on the Judicial Audit Conducted in the RTC, Br. 1, Bangued, Abra*, A.M. No. 97-9-283-RTC, May 31, 2000, 332 SCRA 273.

[17] *Camsa v. Rendon*, A.M. No. MTJ-02-1395, February 19, 2002, 377 SCRA 271. In this case, the Court held —

> "Indeed, the memorandum of the OCA, dated 25 June 2001, suggested the referral of the matter to the Executive Judge for investigation, report and recommendation. There was yet not investigation conducted, let alone a finding thereon by either the OCA or the investigating judge, on the charges against respondent judge. To allow an investigation to proceed against him who could no longer be in any position to defend himself would be a denial of his right to be heard, our most basic understanding of due process. The case against the late judge should now be dismissed and the administrative matter against him deemed closed and terminated."

[18] A.M. No. MTJ-95-1070, February 12, 1997, 268 SCRA 47.

suspension and dismissal from the service, respectively; but respondent died while his case was being deliberated upon by the Court. In all these instances, the Court ordered the dismissal of the cases and did not see it fit to impose a penalty on respondents.

Similarly, in view of the death of respondent Sheriff Oscar P. Patag before the investigating judge or the OCA could make a finding on his culpability, this Court finds it inappropriate to impose a sanction upon him.[19]

WHEREFORE, the complaint against the late Sheriff Oscar P. Patag is *DISMISSED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 145941. December 16, 2008]

THE MANILA BANKING CORPORATION, *petitioner, vs.* **SPOUSES ALFREDO AND CELESTINA RABINA AND MARENIR DEVELOPMENT CORPORATION,** *respondents*.

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[19] Vide: *Report on the Judicial Audit Conducted in the Municipal Trial Courty of Tambulig, supra* at 430; *Apiag v. Cantero, supra* at 64.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; A SECOND MOTION FOR EXTENSION, AS A GENERAL RULE, IS NOT GRANTED EXCEPT FOR THE MOST COMPELLING REASON.— A motion for extension of time to file a pleading is not granted as a matter of right. It is addressed to the sound discretion of the court or a government agency, hence, the movant should never take it for granted that it is going to be granted. This especially holds true with respect to a second motion for extension for, as a general rule, it is not granted except for the most compelling reason, which the Court finds wanting in petitioner's.

2. CIVIL LAW; LAND REGISTRATION; HOUSING AND LAND USE REGULATORY BOARD (HLURB); JURISDICTION OF HLURB TO REGULATE THE REAL ESTATE TRADE IS BROAD ENOUGH TO INCLUDE JURISDICTION OVER COMPLAINTS FOR ANNULMENT OF MORTGAGE.— The act of MDC in mortgaging the lot to petitioner, without the knowledge and consent of lot buyer-respondent spouses and without the approval of the HLURB, as required by P.D. 957, is not only an unsound real estate business practice but also highly prejudicial to them. The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage. To disassociate the issue of nullity of mortgage and lodge it separately with the liquidation court would only cause inconvenience to the parties and would not serve the ends of speedy and inexpensive administration of justice as mandated by the laws vesting quasi-judicial powers in the agency.

3. ID.; ID.; ID.; SECTION 18 OF P.D. 957 (REGULATING SALE OF SUBDIVISION LOTS AND CONDOMINIUMS) IS A PROHIBITORY LAW AND ACTS COMMITTED CONTRARY TO VOID.— Petitioner's argument that the mortgage does not fall under the prohibition in Section 18 of P.D. 957 since the loan obligation of MDC was contracted to finance its purchase of other real properties and not for the development of the subdivision project does not lie. Section 18 provides: *No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.* Such approval shall not be granted unless it is

shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof. As observed in *Far East Bank and Trust Co. v. Marquez*, Section 18 of P.D. 957 is a prohibitory law and acts committed contrary to it are void. Concededly, P.D. 957 aims to protect innocent lot buyers. Section 18 of the decree directly addresses the problem of fraud committed against buyers when the lot they have contracted to purchase, and which they have religiously paid for, is mortgaged without their knowledge. *The avowed purpose of P.D. 957 compels the reading of Section 18 as prohibitory* — acts committed contrary to it are void. Such construal ensures the attainment of the purpose of the law; to protect lot buyers so they do not end up still homeless despite having fully paid for their home lots with their hard earned cash.

4. ID.; ID.; ID.; SECTION 17 OF P.D. 957 PROVIDES THAT IT IS THE SELLER, AND NOT THE BUYER, WHICH IS DUTY BOUND TO REGISTER THE CONTRACT TO SELL AND/ OR THE DEED OF ASSIGNMENT.— Petitioner's argument that respondent spouses "have not shown any proof that at the time the mortgage was executed between [it and] respondent MDC . . . the subject [l]ot was part of a subdivision or a condominium project" does not lie too. Petitioner is aware that respondent MDC is engaged in real estate development. Thus, it even alleged in its petition for review before the appellate court that part of the mortgaged properties was "*a huge parcel of land located in Bo. Bagbag, Novaliches, Quezon City, which tract of land was later on subdivided into lots [including. . .] the lot being claimed by respondent* [spouses] . . . ." Petitioner's laying of fault on respondent spouses for not registering the Contract to Sell and/or the Deed of Assignment in compliance with Section 17 of P.D. No. 957 does not also lie. For Section 17 of said law provides: **All**

> **contracts** *to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full,* **shall be registered by the seller** in the Office of the Register of Deeds of the province or city where the property is situated. Thus, it is the seller, not the buyer, which is duty bound to register the Contract to Sell and/or the Deed of Assignment.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioner.
Rcardo M. Fojas for Sps. Rabina.
Aleli A. Okit for Marenir Dev't. Corp.

D E C I S I O N

CARPIO MORALES, *J.*

The Court of Appeals having affirmed[1] the Order of the Office of the President (OP) dismissing the appeal of the Manila Banking Corporation (petitioner) for belated payment of the requisite appeal fee and belated filing of its appeal memorandum, and holding that the Housing and Land Use Regulatory Board (HLURB) has jurisdiction over it, the present petition for review on *certiorari* was filed.

Respondent Marenir Development Corporation (MDC), owner/developer of a subdivision project located in Brgy. Bagbag, Quezon City, obtained a loan from petitioner in the amount of ₱4,560,000, to secure the payment of which it forged on March 15, 1982 a real estate mortgage covering real estate properties including a lot (the lot) which was the subject of a Contract to Sell to one Amante Sibuyan (Sibuyan).

On May 3, 1985, Sibuyan transferred the lot via "Assignment and Transfer of Rights" to respondent Celestina Rabina (Celestina),

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[1] Decision of July 17, 2000 penned by Justice Remedios A. Salazar-Fernando with the concurrence of Justices Fermin A. Martin, Jr. and Salvador J. Valdez, Jr., CA *rollo*, pp. 231-241.

with the conformity of MDC.[2] The said document mentioned the Contract to Sell which MDC had executed in favor of Sibayan.

After Celestina had fully paid the amortization payments for the lot, she asked MDC for the transfer to her of its title. MDC, however, failed, prompting her to institute a complaint, with the assistance of her husband-co-respondent Alfredo, for non-delivery of titles, annulment of mortgage and incomplete development of the subdivision project Reymarville Subdivision, against petitioner and MDC before the Office of Appeals, Adjudication and Legal Affairs (OAALA) of the HLURB.

In the meantime, petitioner was placed under receivership proceedings by the Monetary Board of the Central Bank.

To the complaint of Celestina and her husband, petitioner contended that, *inter alia*, the HLURB has no jurisdiction over it by virtue of Section 29[3] of Republic Act

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[2] *Rollo*, p. 60.

[3] Section 29. Proceedings upon insolvency. — Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and designate an official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions. The Monetary Board shall thereupon determine within sixty days whether the institution may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public and shall prescribe the conditions under which such resumption of business shall take place as well as the time for fulfillment of such conditions. In such case, the expenses and fees in the

collection and administration of the assets of such institution. If the Monetary Board shall determine and confirm within the said period that the bank or non-bank financial intermediary performing quasi-banking functions is insolvent or cannot resume business with safety to its depositors, creditors, and the general public, it shall, if the public interest requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan which may, when warranted, involve disposition of any or all assets in consideration for the assumption of equivalent liabilities. The liquidator designated as hereunder provided shall, by the Solicitor General, file a petition in the regional trial court reciting the proceedings which have been taken and praying the assistance of the court in the liquidation of such institution. The court shall have jurisdiction in the same proceedings to assist in the adjudication of disputed claims against the bank or non-bank financial intermediary performing quasi-banking functions and in the enforcement of individual liabilities of the stockholders, and do all that is necessary to preserve the assets of such institution and to implement the liquidation plan approved by the Monetary Board. The Monetary Board shall designate an official of the Central Bank, or a person of recognized competence in banking or finance, as liquidator who shall take over and continue the functions of the receiver previously appointed by the Monetary Board under this Section. The liquidator shall, with all convenient speed, convert the assets of the banking institution or non-bank financial intermediary performing quasi-banking functions to money or sell, assign, or otherwise dispose of the same to creditors and other parties for the purpose of paying the debts of such institution and he may, in the name of the bank or non-bank financial intermediary performing quasi-banking functions and with the assistance of counsel as he may retain, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of such institution or defend any action filed against the institution: However, That after having reasonably established all claims against the institution, the liquidator may, with the approval of the court, effect partial payments of such claims from assets of the institution in accordance with their legal priority. **The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver or liquidator and shall, from the moment of such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.** The provisions of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section, Section 28-A, and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by a court only if there is convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith: That the same is raised in an appropriate pleading filed by the stockholders of record representing the majority of the capital stock of the institution before the proper court within a period of ten (10) days from the date the receiver takes charge of the assets and liabilities of the bank or non-bank financial intermediary performing quasi-banking functions or, in case of conservatorship or liquidation, within ten (10) days from receipt of notice

265,[4] as amended by Executive Order No. 289,[5] and that its assets are deemed to be in *custodia legis* of the receiver to thus exempt them from garnishment, levy, attachment or execution.

Finding for respondent spouses, Housing and Land Use Arbiter Cesar A. Manuel, by Decision of February 19, 1992, disposed as follows, quoted *verbatim*:

WHEREFORE, premises considered, judgment is hereby rendered:

"(1) Declaring the mortgage in favor of TMBC valid as a contract of indebtedness as between the parties thereto, but as invalid and ineffective as against the complainant [Celestina] as a lot buyer thereof and the rest of the world;

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by the said majority stockholders of said bank of non-bank financial intermediary of the order of its placement under conservatorship or liquidation. No restraining order or injunction shall be issued by any court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act in the absence of any convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff filed a bond, executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier's check, in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this Section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this Section. Insolvency, under this Act shall be understood to mean that the realizable assets of a bank or a non-bank financial intermediary performing quasi-banking functions as determined by the Central Bank are insufficient to meet its liabilities. The appointment of a conservator under Section 28-A of this Act or the appointment of a receiver or liquidator under this Section shall be vested exclusively with the Monetary Board, the provision of any law, general or special, to the contrary notwithstanding. (Emphasis and underscoring supplied)

[4] Entitled "THE CENTRAL BANK ACT."

[5] Entitled "FURTHER AMENDING REPUBLIC ACT NO. 265, AS AMENDED OTHERWISE KNOWN AS "THE CENTRAL BANK ACT" Issued July 25, 1987.

(2) Directing respondent TMBC to release the mortgage on the lot subject of this case and, accordingly release the titles thereof to complainant;

(3) Restraining respondent TMBC from instituting or proceeding with foreclosure proceeding against the lot subject of this case, and other lots similarly situated;

(4) Directing the Register of Deeds of Quezon City to cancel the aforesaid mortgage on the subject title; and to cancel said title and issue a new one in lieu thereof in favor of complainant;

(5) Ordering the forfeiture of the performance bond posted by respondent MDC in favor of the HLURB, and directing the bonding company to deliver/surrender the value thereof to this Board;

(6) Directing the City Engineer of Quezon City to prepare and submit to the Enforcement Office of this Board within thirty (30) days from finality hereof an estimate of the cost of development of the remaining vital features of the project, as well as a proposed program of work for the development and completion of the said project, for approval by the said office; and to undertake the development of said project in accordance with said approved program of work, charging his expenses to the bond confiscated by the Board;

(7) **Awarding ₱50,000.00 as moral damages** in favor of the complainant for wounded feelings and serious anxieties that she suffered **as a result of respondent's (Marenir) refusal to comply with its obligation;**

(8) Awarding the sum of ₱50,000.00 by way of attorney's fee to the complainant who was constrained to hire a lawyer to protect her right and interest over the property in question;

(9) Imposing an administrative fine on MDC in the amount of ₱10,000.00;

(10) Dismissing the counterclaims of both respondents as they are in pari delicto in entering into the subject mortgage." (Emphasis and underscoring supplied)

MDC did not appeal, rendering the decision final and executory as to it.

On petitioner's appeal, the HLURB Board of Commissioners affirmed the Arbiter's decision.

Petitioner elevated the case to the OP which directed it, by Order of March 25, 1994, to "remit the sum of Two Hundred Pesos (P200.00) as appeal fee, payable to the "Cashier, Office of the President," and submit its appeal memorandum, copy furnished complainant; otherwise it would decide the case without further notice. Petitioner had up to April 28, 1994 to pay the appeal fee. It, however, filed the appeal fee a day late or on April 29, 1994.

Petitioner filed a motion for extension of 15 days within which to submit its appeal memorandum or until May 13, 1994, which motion the OP granted with the condition that "no further extension shall be granted."

On May 13, 1994, petitioner, however, again moved for an extension of 10 days or until May 23, 1994 to file its appeal memorandum. Without determining whether its motion for a second extension was granted, petitioner filed its appeal memorandum on May 20, 1994.

By Order of May 25, 1998, the OP dismissed petitioner's appeal for "non-payment of appeal fees and failure to comply with the Orders of this Office, dated March 25, 1996 [*sic*] and May 10, 1994."

In its motion for reconsideration, petitioner presented Official Receipt No. 0124273 dated April 29, 1994 issued by the OP showing payment of the docket fees. By Order of December 21, 1998, the OP denied the motion for failure of petitioner to timely submit its appeal memorandum: Undeterred, petitioner filed a motion for reconsideration which the OP denied by Order of October 4, 1999, citing Section 7 of Administrative Order No. 18 (Series of 1987).[6]

On appeal by petitioner, the Court of Appeals affirmed the Orders of the OP by the herein challenged Decision, holding,

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[6] "…. Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases."

inter alia, that

> Petitioner's plea for a liberal treatment, rather than strict adherence to the technical rules, in order to promote substantial justice is without merit. It has been consistently held that payment in full of docket fees within the prescribed period is mandatory. x x x
>
> … The records of this case reveal that petitioner bank had until April 28, 1994 within which to file its appeal memorandum and pay the appeal fees, but as admitted by petitioner in its petition, it paid the corresponding appeal fee only on April 29, 1994, which is one day late and filed its Appeal Memorandum only on May 20, 1994 or seven days after the lapse of the extended period granted by the Office of the President. Furthermore, when petitioner filed its second motion for extension of time to file the appeal memorandum, it should have verified the action taken thereon, if any. Petitioner has no right whatsoever to presume that it would be granted. x x x (underscoring supplied),

and that contrary to petitioner's contention, the HLURB has jurisdiction over it under Presidential Decree No. 957.[7]

Hence, the present petition, which oddly impleads MDC as a respondent, faulting the appellate court in:

1. . . . affirming the Decision of the Office of the President dismissing the appeal of TMBC purely on a mere technicality in total disregard and without due consideration of the merits thereof.
2. . . . ruling that the HLURB has jurisdiction over TMBC;
3. . . . affirming the orders of the HLURB.

The petition fails.

A motion for extension of time to file a pleading is not granted as a matter of right. It is addressed to the sound discretion of the court or a government agency, hence, the movant should never take it for granted that it is going to be granted. This especially holds true with respect to a second motion for extension

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[7] The Subdivision and Condominium Buyers "Protective Decree."

for, as a general rule, it is not granted except for the most compelling reason,[8] which the Court finds wanting in petitioner's.

Procedural *faux pas* aside, the petition, on the merits, fails.

The jurisdiction of the HLURB is well-defined. Thus, *Arranza v. BF Homes, Inc.*[9] holds:

> Section 3 of P.D. No. 957 empowered the National Housing Authority (NHA) with the "exclusive jurisdiction to regulate the real estate trade and business." On 2 April 1978, P.D. No. 1344 was issued to expand the jurisdiction of the NHA to include the following:
>
> "Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims ***filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman***; and
>
> C. Cases involving ***specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, broker or salesman."***

Thereafter, the regulatory and quasi-judicial functions of the NHA were transferred to the Human Settlements Regulatory Commission (HSRC) by virtue of Executive Order No. 648 dated 7 February 1981. Section 8 thereof specifies the functions of the NHA that were transferred to the HSRC including the authority to hear and decide "cases on unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers or

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[8] *Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation*, G.R. 152801, August 20, 2004, 437 SCRA 145, 150.

[9] 389 Phil. 318 (2000). *Vide* also *C.T. Torres Enterprises vs. Hibionada*, G.R. No. 80916, November 9, 1990, 191 SCRA 268; *Antipolo Realty Corporation v. National Housing Authority*, G.R. No. L-50444, August 31, 1987, 153 SCRA 399.

salesmen and cases of specific performance." Executive Order No. 90 dated 17 December 1986 renamed the HSRC as the Housing and Land Use Regulatory Board (HLURB).

The act of MDC in mortgaging the lot to petitioner, without the knowledge and consent of lot buyer-respondent spouses and without the approval of the HLURB, as required by P.D. 957, is not only an unsound real estate business practice but also highly prejudicial to them.

The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage.[10] To disassociate the issue of nullity of mortgage and lodge it separately with the liquidation court would only cause inconvenience to the parties and would not serve the ends of speedy and inexpensive administration of justice as mandated by the laws vesting quasi-judicial powers in the agency.[11]

Petitioner's argument that the mortgage does not fall under the prohibition in Section 18 of P.D. 957 since the loan obligation of MDC was contracted to finance its purchase of other real properties and not for the development of the subdivision project does not lie.

Section 18 provides:

No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding

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[10] *Union Bank v. Housing and Land Use Regulatory Board*, G.R. No. 95364, June 29, 1992, 210 SCRA 558, 564.

[11] *Vide* Executive Order No. 648, February 7, 1981.

mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof. (Emphasis and underscoring supplied)

As observed in *Far East Bank and Trust Co. v. Marquez,*[12] Section 18 of P.D. 957 is a prohibitory law and acts committed contrary to it are void.

Concededly, P.D. 957 aims to protect innocent lot buyers. Section 18 of the decree directly addresses the problem of fraud committed against buyers when the lot they have contracted to purchase, and which they have religiously paid for, is mortgaged without their knowledge. The avowed purpose of P.D. 957 compels the reading of Section 18 as prohibitory — acts committed contrary to it are void. Such construal ensures the attainment of the purpose of the law; to protect lot buyers so they do not end up still homeless despite having fully paid for their home lots with their hard earned cash. (Underscoring supplied)

Petitioner's argument that respondent spouses "have not shown any proof that at the time the mortgage was executed between [it and] respondent MDC . . . the subject [l]ot was part of a subdivision or a condominium project"[13] does not lie too.

Petitioner is aware that respondent MDC is engaged in real estate development.[14] Thus, it even alleged in its petition for review before the appellate court that part of the mortgaged properties was "a huge parcel of land located in Bo. Bagbag, Novaliches, Quezon City, which tract of land was later on subdivided into lots [including…] the lot being claimed by respondent [spouses] x x x."[15] (Underscoring supplied)

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[12] G.R. No. 147964, January 20, 2004, 420 SCRA 349.

[13] *Rollo*, p. 35.

[14] *Id.* at 113, Statement of Facts and Case in petitioner's Petition for Review before the Court of Appeals.

[15] *Id.* at 114.

Petitioner's laying of fault on respondent spouses for not registering the Contract to Sell and/or the Deed of Assignment in compliance with Section 17 of P.D. No. 957 does not also lie. For Section 17 of said law provides:

> **All contracts** to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, **shall be registered by the seller** in the Office of the Register of Deeds of the province or city where the property is situated. Whenever a subdivision plan duly approved in accordance with Section 4 hereof, together with the corresponding owner's duplicate certificate of title, is presented to the Register of Deeds for registration, the Register of Deeds shall register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that if there is a street, passageway or required open space delineated on a complex subdivision plan hereafter approved and as defined in this Decree, the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of a city or municipality, no portion of any street, passageway, or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the requisite approval as provided under Section 22 of this Decree." (Emphasis and underscoring supplied)

Thus, it is the seller, not the buyer, which is duty bound to register the Contract to Sell and/or the Deed of Assignment.

Petitioner finally contests the award of damages to respondent spouses. A reading of the Arbiter's decision, however, shows that the liability for moral damages does not fall on petitioner but on MDC.

WHEREFORE, the petition is *DENIED* and the Decision of July 17, 2000 of the Court of Appeals *AFFIRMED*.

SO ORDERED.

Quisumbing, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 157784. December 16, 2008]

RICHARD B. LOPEZ, in his Capacity as Trustee of the Trust Estate of the late Juliana Lopez-Manzano, *petitioner, vs.* **COURT OF APPEALS, CORAZON LOPEZ, FERNANDO LOPEZ, ROBERTO LOPEZ, represented by LUZVIMINDA LOPEZ, MARIA ROLINDA MANZANO, MARIA ROSARIO MANZANO SANTOS, JOSE MANZANO, JR., NARCISO MANZANO (all represented by Attorney-in-fact, MODESTO RUBIO), MARIA CRISTINA MANZANO RUBIO, IRENE MONZON and ELENA MANZANO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; TRUSTS; IMPLIED TRUSTS; DEFINED. — Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. The provision on implied trust governing the factual milieu of this case is provided in Article 1456 of the Civil Code, which states: "ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

2. ID.; ID.; ID.; ID.; KINDS. — In *Aznar Brothers Realty Company v. Aying*, the Court differentiated two kinds of implied trusts, to wit: "In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows: Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature of circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in

equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold." A resulting trust is presumed to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction but not expressed in the deed itself. Specific examples of resulting trusts may be found in the Civil Code, particularly Arts. 1448, 1449, 1451, 1452 and 1453. A constructive trust is created, not by any word evincing a direct intention to create a trust, but by operation of law in order to satisfy the demands of justice and to prevent unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it. Constructive trusts are illustrated in Arts. 1450, 1454, 1455 and 1456.

3. ID.; PRESCRIPTION OF ACTIONS; AN ACTION FOR RECONVEYANCE BASED ON IMPLIED OR CONSTRUCTIVE TRUST PRESCRIBES IN TEN YEARS. — The right to seek reconveyance based on an implied or constructive trust is not absolute. It is subject to extinctive prescription. An action for reconveyance based on implied or constructive trust prescribes in 10 years. This period is reckoned from the date of the issuance of the original certificate of title or transfer certificate of title. Since such issuance operates as a constructive notice to the whole world, the discovery of the fraud is deemed to have taken place at that time.

4. ID.; OBLIGATIONS AND CONTRACTS; TRUSTS; THE RULE THAT A TRUSTEE CANNOT ACQUIRE BY PRESCRIPTION OWNERSHIP OVER PROPERTY ENTRUSTED TO HIM UNTIL AND UNLESS HE REPUDIATES THE TRUST APPLIES ONLY TO EXPRESS TRUSTS AND RESULTING IMPLIED TRUSTS. — [T]he rule that a trustee cannot acquire by prescription ownership over property entrusted to him until and unless he repudiates the trust applies only to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the

relationship. Necessarily, repudiation of said trust is not a condition precedent to the running of the prescriptive period.

APPEARANCES OF COUNSEL

P. Nolasco & Associates for petitioner.
Ricardo T. Diaz for M.R. manzano, *et al*.
Geminiano M. Aquino for C. Lopez, *et al*.

D E C I S I O N

TINGA, *J*.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision[1] and Resolution of the Court of Appeals in CA-G.R. CV No. 34086. The Court of Appeals' decision affirmed the summary judgment of the Regional Trial Court (RTC), Branch 10, Balayan, Batangas, dismissing petitioner's action for reconveyance on the ground of prescription.

The instant petition stemmed from an action for reconveyance instituted by petitioner Richard B. Lopez in his capacity as trustee of the estate of the late Juliana Lopez Manzano (Juliana) to recover from respondents several large tracts of lands allegedly belonging to the trust estate of Juliana.

The decedent, Juliana, was married to Jose Lopez Manzano (Jose). Their union did not bear any children. Juliana was the owner of several properties, among them, the properties subject of this dispute. The disputed properties totaling more than 1,500 hectares consist of six parcels of land, which are all located in Batangas. They were the exclusive paraphernal properties of Juliana together with a parcel of land situated in Mindoro known as Abra de Ilog and a fractional interest in a residential land on Antorcha St., Balayan, Batangas.

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[1] Penned by *J*. Roberto A. Barrios, Chairman of the Fifteenth Division, and concurred in by *JJ*. Eliezer De Los Santos and Danilo B. Pine; *rollo*, p. 92.

On 23 March 1968, Juliana executed a notarial will,[2] whereby she expressed that she wished to constitute a trust fund for her paraphernal properties, denominated as *Fideicomiso de Juliana Lopez Manzano* (*Fideicomiso*), to be administered by her husband. If her husband were to die or renounce the obligation, her nephew, Enrique Lopez, was to become administrator and executor of the *Fideicomiso*. Two-thirds (2/3) of the income from rentals over these properties were to answer for the education of deserving but needy honor students, while one-third 1/3 was

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[2] Records, pp. 654-655.

MI TESTAMENTO

Yo, JULIANA LOPEZ MANZANO, residente de Balayan, Batangas, por la presente otorgo este un testamento y ultima voluntad en español, lenguaje que poseo, y en efecto declare;

x x x x x x x x x

TERCERO. Con respecto a mis propriedades parafernales, ***constituyo en fideicomiso que se llamara Fideicomiso de Juliana Lopez Manzano, todo cuanto pueda yo disponer legalmente de dichas propriedades parafernales****, bajo la administracion de mi marido, Jose Lopez Manzano, y en caso de su fallicimiento o renuncia, de mi sobrino, Enrique Lopez y Solis, como fideicomisario. De las rentas de dicho fideicomiso, que se depositaran en un banco, dos terceras partes (2/3) deberan segregarse para sufregar los gastos de la educacion de los nietos, bizmietos y tataranietos de las familias Lopez Solis; Lopez Jison, y Lopez Chavez y todos los estudiantes de Balayan, Tuy, y Calaca, Batangas, que obtengan calificaciones sobrasalientes en sus estudios, pero carezcan de medios para continuar su educacion ulterior. El tercio (1/3) restante sera adjudicado a quienquiera que fuese el fideicomisario como sus honorarios por los trabajos de administracion.*

CUATRO. Con respecto a nuestras propriedades conyugales y las propriedades cuyos titulos estan nombre de nosotros dos, adjudico la totalidad de la parte que yo pueda disponer legalmente a mis marido, Jose Lopez Manzano. A su fallecimiento, dichas propiedades (sic) pasaran a mis bizniestos Corazon, Ferdinand, y Roberto, todos appellidados Lopez, hijos de mi nieto Lorenzo J. Lopez.

QUINTO. Por la presente nombre y designo a mi marido, Jose Lopez Manzano, y en caso de su fallecimiento or renuncia, a mi sobrino, Enrique Lopez y Solis, albacea, con relevación de fianza, de este mi testamento que abarca la totalidad de los bienes que pueda disponer bajo la ley.

Firmo la presente en Balayan, Batangas hoy 23 de Marzo de 1968.

to shoulder the expenses and fees of the administrator. As to her conjugal properties, Juliana bequeathed the portion that she could legally dispose to her husband, and after his death, said properties were to pass to her *biznietos* or great grandchildren.

Juliana initiated the probate of her will five (5) days after its execution, but she died on 12 August 1968, before the petition for probate could be heard. The petition was pursued instead in Special Proceedings (S.P.) No. 706 by her husband, Jose, who was the designated executor in the will. On 7 October 1968, the Court of First Instance, Branch 3, Balayan, Batangas, acting as probate court, admitted the will to probate and issued the letters testamentary to Jose. Jose then submitted an inventory of Juliana's real and personal properties with their appraised values, which was approved by the probate court.

Thereafter, Jose filed a Report dated 16 August 1969, which included a proposed project of partition. In the report, Jose explained that as the only compulsory heir of Juliana, he was entitled by operation of law to one-half (1/2) of Juliana's paraphernal properties as his legitime, while the other one-half (1/2) was to be constituted into the *Fideicomiso*. At the same time, Jose alleged that he and Juliana had outstanding debts totaling ₱816,000.00 excluding interests, and that these debts were secured by real estate mortgages. He noted that if these debts were liquidated, the "residuary estate available for distribution would, value-wise, be very small."

From these premises, Jose proceeded to offer a project of partition. The relevant portion pertaining to the *Fideicomiso* stated, thus:

PROJECT OF PARTITION

14. Pursuant to the terms of the Will, one-half (1/2) of the following properties, which are not burdened with any obligation, shall be constituted into the "Fidei-comiso de Juliana Lopez Manzano" and delivered to Jose Lopez Manzano as trustee thereof:

Location	Title No.	Area(Sq.M.)	Improvements
Abra de Ilog, *etc*.	TCT - 540	2,940,000	pasture,

Mindoro		
Antorcha St. residential Balayan, Batangas (1/6 thereof)	TCT – 1217-A	13,040

and all those properties to be inherited by the decedent, by intestacy, from her sister, Clemencia Lopez y Castelo.

15. The other half (1/2) of the aforesaid properties is adjudicated to Jose Lopez Manzano as heir.

Then, Jose listed those properties which he alleged were registered in both his and Juliana's names, totaling 13 parcels in all. The disputed properties consisting of six (6) parcels, all located in Balayan, Batangas, were included in said list. These properties, as described in the project of partition, are as follows:

Location Improvements	Title No.	Area (Sq. M.
Pantay, Calaca, Batangas		91,283 coconuts
Mataywanak, Tuy, Batangas	OCT-29[6]94	485,486 sugar
Patugo, Balayan, Batangas	OCT-2807	16,757,615 coconut, sugar, citrus, pasteur
Cagayan, Balayan, Batangas	TCT-1220	411,331 sugar
Pook, Baayan Batangas	TCT-1281	135,922 sugar
Bolbok, Balayan,	TCT-18845	444,998 sugar

Batangas Calzada, Balayan,	TCT 1978	2,312 sugar
Batangas Gumamela, Balayan,	TCT-2575	829
Batangas Bombon, Balayan,		4,532
Batangas Parañaque, Rizal	TCT-282340	800 residential
Parañaque, Rizal	TCT-11577	800 residential
Modesto St., Manila	TCT-52212	137.8 residential

and the existing sugar quota in the name of the deceased with the Central Azucarera Don Pedro at Nasugbo.

16. The remaining 1/4 shall likewise go to Jose Lopez Manzano, with the condition to be annotated on the titles thereof, that upon his death, the same shall pass on to Corazon Lopez, Ferdinand Lopez, and Roberto Lopez:

Location Improvements	Title No.	Area (Sq. M.)
Dalig, Balayan, sugar	TCT-10080	482,872
Batangas San Juan, Rizal residential	TCT-53690	523

On 25 August 1969, the probate court issued an order approving the project of partition. As to the properties to be constituted into the *Fideicomiso*, the probate court ordered that the certificates of title thereto be cancelled, and, in lieu thereof, new certificates be issued in favor of Jose as trustee of the *Fideicomiso* covering one-half (1/2) of the properties listed under paragraph 14 of the project of partition; and regarding the other half, to be registered in the name of Jose as heir of Juliana. The properties which Jose had alleged as registered in his and Juliana's names, including the disputed lots, were

adjudicated to Jose as heir, subject to the condition that Jose would settle the obligations charged on these properties. The probate court, thus, directed that new certificates of title be issued in favor of Jose as the registered owner thereof in its Order dated 15 September 1969. On even date, the certificates of title of the disputed properties were issued in the name of Jose.

The *Fideicomiso* was constituted in S.P No. 706 encompassing one-half (1/2) of the Abra de Ilog lot on Mindoro, the 1/6 portion of the lot in Antorcha St. in Balayan, Batangas and all other properties inherited *ab intestato* by Juliana from her sister, Clemencia, in accordance with the order of the probate court in S.P. No. 706. The disputed lands were excluded from the trust.

Jose died on 22 July 1980, leaving a holographic will disposing of the disputed properties to respondents. The will was allowed probate on 20 December 1983 in S.P. No. 2675 before the RTC of Pasay City. Pursuant to Jose's will, the RTC ordered on 20 December 1983 the transfer of the disputed properties to the respondents as the heirs of Jose. Consequently, the certificates of title of the disputed properties were cancelled and new ones issued in the names of respondents.

Petitioner's father, Enrique Lopez, also assumed the trusteeship of Juliana's estate. On 30 August 1984, the RTC of Batangas, Branch 9 appointed petitioner as trustee of Juliana's estate in S.P. No. 706. On 11 December 1984, petitioner instituted an action for reconveyance of parcels of land with sum of money before the RTC of Balayan, Batangas against respondents. The complaint5 essentially alleged that Jose was able to register in his name the disputed properties, which were the paraphernal properties of Juliana, either during their conjugal union or in the course of the performance of his duties as executor of the testate estate of Juliana and that upon the death of Jose, the disputed properties were included in the inventory as if they formed part of Jose's estate when in fact Jose was holding them only in trust for the trust estate of Juliana.

Respondents Maria Rolinda Manzano, Maria Rosario Santos, Jose Manzano, Jr., Narciso Manzano, Maria Cristina Manzano

Rubio and Irene Monzon filed a joint answer with counterclaim for damages. Respondents Corazon, Fernando and Roberto, all surnamed Lopez, who were minors at that time and represented by their mother, filed a motion to dismiss, the resolution of which was deferred until trial on the merits. The RTC scheduled several pre-trial conferences and ordered the parties to submit pre-trial briefs and copies of the exhibits.

On 10 September 1990, the RTC rendered a summary judgment, dismissing the action on the ground of prescription of action. The RTC also denied respondents' motion to set date of hearing on the counterclaim.

Both petitioner and respondents elevated the matter to the Court of Appeals. On 18 October 2002, the Court of Appeals rendered the assailed decision denying the appeals filed by both petitioner and respondents. The Court of Appeals also denied petitioner's motion for reconsideration for lack of merit in its Resolution dated 3 April 2003.

Hence, the instant petition attributing the following errors to the Court of Appeals:

I. THE COURT OF APPEAL'S CONCLUSION THAT PETITIONER'S ACTION FOR [RECONVEYANCE] HAS PRESCRIBED TAKING AS BASIS SEPTEMBER 15, 1969 WHEN THE PROPERTIES IN DISPUTE WERE TRANSFERRED TO THE NAME OF THE LATE JOSE LOPEZ MANZANO IN RELATION TO DECEMBER 12, 1984 WHEN THE ACTION FOR RECONVEYANCE WAS FILED IS ERRONEOUS.

II. THE RESPONDENT COURT OF APPEALS CONCLUSION IN FINDING THAT THE FIDUCIARY RELATION ASSUMED BY THE LATE JOSE LOPEZ MANZANO, AS TRUSTEE, PURSUANT TO THE LAST WILL AND TESTAMENT OF JULIANA LOPEZ MANZANO WAS IMPLIED TRUST, INSTEAD OF EXPRESS TRUST IS EQUALLY ERRONEOUS.

None of the respondents filed a comment on the petition. The counsel for respondents Corazon, Fernando and Roberto, all surnamed Lopez, explained that he learned that respondents

had migrated to the United States only when the case was pending before the Court of Appeals.[3] Counsel for the rest of the respondents likewise manifested that the failure by said respondents to contact or communicate with him possibly signified their lack of interest in the case.[4] In a Resolution dated 19 September 2005, the Court dispensed with the filing of a comment and considered the case submitted for decision.

The core issue of the instant petition hinges on whether petitioner's action for reconveyance has prescribed. The resolution of this issue calls for a determination of whether an implied trust was constituted over the disputed properties when Jose, the trustee, registered them in his name.

Petitioner insists that an express trust was constituted over the disputed properties; thus the registration of the disputed properties in the name of Jose as trustee cannot give rise to prescription of action to prevent the recovery of the disputed properties by the beneficiary against the trustee.

Evidently, Juliana's testamentary intent was to constitute an express trust over her paraphernal properties which was carried out when the *Fideicomiso* was established in S.P. No. 706.[5] However, the disputed properties were expressly excluded from the *Fideicomiso*. The probate court adjudicated the disputed properties to Jose as the sole heir of Juliana. If a mistake was made in excluding the disputed properties from the *Fideicomiso* and adjudicating the same to Jose as sole heir, the mistake was not rectified as no party appeared to oppose or appeal the exclusion of the disputed properties from the *Fideicomiso*. Moreover, the exclusion of the disputed properties from the *Fideicomiso* bore the approval of the probate court. The issuance of the probate court's order adjudicating the disputed properties to

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[3] *Rollo*, p. 306.

[4] *Id*., at 301.

[5] Records, p. 751. The properties that pertained to the *Fideicomiso* were the Abra de Ilog lot in Mindoro, the residential property on Antorcha St., Balayan, Batangas and the properties inherited from Clemencia Lopez.

Jose as the sole heir of Juliana enjoys the presumption of regularity.[6]

On the premise that the disputed properties were the paraphernal properties of Juliana which should have been included in the *Fideicomiso*, their registration in the name of Jose would be erroneous and Jose's possession would be that of a trustee in an implied trust. Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties.[7]

The provision on implied trust governing the factual milieu of this case is provided in Article 1456 of the Civil Code, which states:

> ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

In *Aznar Brothers Realty Company v. Aying*,[8] the Court differentiated two kinds of implied trusts, to wit:

> x x x In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows:
>
> Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature of circumstances of the

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[6] RULES OF COURT, Rule 131, Sec. 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by evidence: xxx

(m) That official duty has been regularly performed;

(n) That a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction.

[7] *Heirs of Yap v. Court of Appeals*, 371 Phil. 523, 530 (1999).

[8] G.R. No. 144773, 16 May 2005, 458 SCRA 496.

consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[9]

A resulting trust is presumed to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction but not expressed in the deed itself.[10] Specific examples of resulting trusts may be found in the Civil Code, particularly Arts. 1448,[11] 1449,[12] 1451,[13] 1452[14] and 1453.[15]

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[9] *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, 16 May 2005, 458 SCRA 496, 508-509.

[10] *Spouses Bejoc v. Cabreros*, G.R. No. 145849.

[11] Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

[12] Art. 1449. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.

[13] Art. 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

[14] Art. 1452. If two or more persons agree to purchase property and by common the consent legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

[15] Art. 1453. When property is conveyed to a person in reliance upon his declared intention to hold for it, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated. *O'Lao v. Co Cho Chit*, G.R. No. 58010, 31 March 1993, 220 SCRA 656, 663-4.

A constructive trust is created, not by any word evincing a direct intention to create a trust, but by operation of law in order to satisfy the demands of justice and to prevent unjust enrichment.[16] It is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it.[17] Constructive trusts are illustrated in Arts. 1450,[18] 1454,[19] 1455[20] and 1456.[21]

The disputed properties were excluded from the *Fideicomiso* at the outset. Jose registered the disputed properties in his name partly as his conjugal share and partly as his inheritance from his wife Juliana, which is the complete reverse of the claim of the petitioner, as the new trustee, that the properties are intended for the beneficiaries of the *Fideicomiso*. Furthermore, the exclusion of the disputed properties from the *Fideicomiso* was

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[16] *Spouses Bejoc v. Cabreros*

[17] *Policarpio v. Court of Appeals*, 336 Phil. 329, 342 (1997).

[18] Art. 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is pa*id.* The latter may redeem the property and compel a conveyance thereof to him.

[19] Art. 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

[20] Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

[21] Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

O'Lao v. Co Cho Chit, G.R. No. 58010, 31 March 1993, 220 SCRA 656, 663-4.

approved by the probate court and, subsequently, by the trial court having jurisdiction over the *Fideicomiso*. The registration of the disputed properties in the name of Jose was actually pursuant to a court order. The apparent mistake in the adjudication of the disputed properties to Jose created a mere implied trust of the constructive variety in favor of the beneficiaries of the *Fideicomiso*.

Now that it is established that only a constructive trust was constituted over the disputed properties, may prescription for the recovery of the properties supervene?

Petitioner asserts that, if at all, prescription should be reckoned only when respondents caused the registration of the disputed properties in their names on 13 April 1984 and not on 15 September 1969, when Jose registered the same in his name pursuant to the probate court's order adjudicating the disputed properties to him as the sole heir of Juliana. Petitioner adds, proceeding on the premise that the prescriptive period should be counted from the repudiation of the trust, Jose had not performed any act indicative of his repudiation of the trust or otherwise declared an adverse claim over the disputed properties.

The argument is tenuous.

The right to seek reconveyance based on an implied or constructive trust is not absolute. It is subject to extinctive prescription.[22] An action for reconveyance based on implied or constructive trust prescribes in 10 years. This period is reckoned from the date of the issuance of the original certificate of title or transfer certificate of title. Since such issuance operates as a constructive notice to the whole world, the discovery of the fraud is deemed to have taken place at that time.[23]

In the instant case, the ten-year prescriptive period to recover the disputed property must be counted from its registration in the name of Jose on 15 September 1969, when petitioner was charged with constructive notice that Jose adjudicated the disputed

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[22] *Spouses Bejoc v. Cabreros*, G.R. No. 145849, 22 July 2005.

[23] *Id*.

properties to himself as the sole heir of Juana and not as trustee of the *Fideicomiso*.

It should be pointed out also that Jose had already indicated at the outset that the disputed properties did not form part of the *Fideicomiso* contrary to petitioner's claim that no overt acts of repudiation may be attributed to Jose. It may not be amiss to state that in the project of partition submitted to the probate court, Jose had indicated that the disputed properties were conjugal in nature and, thus, excluded from Juliana's *Fideicomiso*. This act is clearly tantamount to repudiating the trust, at which point the period for prescription is reckoned.

In any case, the rule that a trustee cannot acquire by prescription ownership over property entrusted to him until and unless he repudiates the trust applies only to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of said trust is not a condition precedent to the running of the prescriptive period.[24] Thus, for the purpose of counting the ten-year prescriptive period for the action to enforce the constructive trust, the reckoning point is deemed to be on 15 September 1969 when Jose registered the disputed properties in his name.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED* and the decision and resolution of the Court of Appeals in CA-G.R. CV No. 34086 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[24] *Aznar*, citing *Vda. de Esconde v. Court of Appeals*, 253 SCRA 66.

EN BANC

[G.R. No. 169013. December 16, 2008]

DEPARTMENT OF EDUCATION, represented by its Officer-in-Charge and Undersecretary, RAMON C. BACANI, *petitioner, vs.* **GODOFREDO G. CUANAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; THE DISCIPLINING AUTHORITY QUALIFIES AS A PARTY ADVERSELY AFFECTED BY THE JUDGMENT WHO CAN FILE AN APPEAL OF A JUDGMENT OF EXONERATION IN AN ADMINISTRATIVE CASE. — In a long line of cases, beginning with *Civil Service Commission v. Dacoycoy*, and reiterated in *Philippine National Bank v. Garcia, Jr.*, the Court has maintained that the disciplining authority qualifies as a party adversely affected by the judgment, who can file an appeal of a judgment of exoneration in an administrative case. CSC Resolution No. 021600 allows the disciplining authority to appeal from a decision exonerating an erring employee, thus: "Section 2. *Coverage and Definition of Terms.* — x x x (l) PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered or *to the disciplining authority in an appeal from a decision exonerating the said employee."*

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; THE PROPER REMEDY OF AN AGGRIEVED PARTY FROM A RESOLUTION ISSUED BY THE CIVIL SERVICE COMMISSION; RECOURSE TO A PETITION FOR *CERTIORARI* UNDER RULE 65, WHEN AVAILABLE. — The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice

so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; A MOTION FOR RECONSIDERATION IS A CONDITION PRECEDENT TO THE FILING OF A PETITION FOR *CERTIORARI;* EXCEPTIONS. — [W]hile a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, immediate recourse to the extraordinary remedy of *certiorari* is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object.

4. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION OF REGULARITY OF PERFORMANCE OF DUTY INCLUDES THAT OF REGULARITY OF SERVICE OF JUDGMENTS, FINAL ORDERS OR RESOLUTIONS. — Under the Rules of Evidence, it is presumed that official duty has been regularly performed, unless contradicted. This presumption includes that of regularity of service of judgments, final orders or resolutions.

5. ID.; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENTS; ONCE JUDGMENT HAS BECOME FINAL AND EXECUTORY, IT BECOMES IMMUTABLE AND CAN NO LONGER BE AMENDED OR MODIFIED. — It is elementary that once judgment has become final and executory, it becomes immutable and can no longer be amended or modified. In *Gallardo-Corro v. Gallardo*, this Court held: "Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment

is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality."

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE TRIBUNALS; BOUND BY LAW AND PRACTICE TO OBSERVE THE FUNDAMENTAL AND ESSENTIAL REQUIREMENTS OF DUE PROCESS IN JUSTICIABLE CASES PRESENTED BEFORE THEM. — [W]hile it is true that administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements, they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Edralin S. Mateo for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated May 16, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 87499 which set aside Resolution No. 041147 dated October 22, 2004 of the Civil Service Commission (CSC) finding respondent Godofredo G. Cuanan (Cuanan) guilty of sexual harassment and dismissing him from service, and the

[1] Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Eliezer R. de Los Santos and Arturo D. Brion (now a member of this Court), CA *rollo*, p. 134.

CA Resolution[2] dated July 18, 2005 which denied the Motion for Reconsideration of the Department of Education (DepEd).

The factual background of the case is as follows:

On March 11, 1996, Luzviminda Borja and Juliana Castro, on behalf of their respective minor daughters, Lily Borja and Charo Castro, filed before the Department of Education, Culture and Sports - Regional Office No. III (DECS-RO No. III), Cabanatuan City, two separate administrative complaints[3] for Sexual Harassment and Conduct Unbecoming a Public Officer against Cuanan, then Principal of Lawang Kupang Elementary School in San Antonio, Nueva Ecija.

Acting on the complaints, DECS-RO No. III Regional Director Vilma L. Labrador constituted an Investigating Committee, composed of three DepEd officials from the province, to conduct a formal investigation. Following the investigation, the Investigating Committee submitted its Investigation Report[4] dated December 14, 1999, finding Cuanan guilty of sexual harassment and recommending his forced resignation without prejudice to benefits. In a Decision[5] dated January 28, 2000, Regional Director Labrador concurred in the findings of the Investigating Committee and meted out the penalty of forced resignation to Cuanan without prejudice to benefits.

In an Order[6] dated April 13, 2000, then DepEd Secretary Andrew Gonzales affirmed the Decision of Regional Director Labrador. On May 30, 2000, Cuanan filed a Petition for Reconsideration[7] thereof, but the same was denied for lack of merit by Secretary Gonzales in a Resolution[8] dated June 19, 2000.

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[2] CA *rollo*, p. 161.

[3] CSC records, p. 407-A, 501.

[4] *Id.* at 661.

[5] *Id.* at 638.

[6] *Id.* at 634.

[7] *Id.* at 589.

[8] *Id.* at 640.

Cuanan elevated his case to the CSC. On January 20, 2003, the CSC issued Resolution No. 030069,[9] which set aside the June 19, 2000 Resolution of Secretary Gonzales and exonerated Cuanan from the charge of sexual harassment. On January 23, 2003, copies of the resolution were duly sent to the parties, including the DepEd.10 Cuanan received a copy of Resolution No. 030069 on January 31, 2003.[11]

In a Letter dated February 3, 2003, Cuanan requested his reinstatement as Elementary School Principal I.[12] In a 1st Indorsement, the District Supervisor recommended appropriate action.[13] In a 2nd Indorsement dated February 4, 2003, Schools Division Superintendent Dioscorides D. Lusung (Superintendent) recommended that Cuanan be reinstated to duty as School Principal of San Antonio District upon finality of the decision of the CSC.[14] In a Letter[15] dated February 10, 2003, Regional Director Ricardo T. Sibug informed the Superintendent that Cuanan could not be immediately reinstated to the service until an order of implementation was received from the Department Secretary.

Sometime in March 2003, DepEd Undersecretary Jose Luis Martin C. Gascon sent a letter to the CSC requesting a copy of CSC Resolution No. 030069 dated January 20, 2003. In a Letter[16] dated March 25, 2003, the CSC informed the DepEd that a copy of the requested resolution was duly sent to it on January 23, 2003. Nonetheless, the CSC sent another copy of the resolution to the DepEd for its reference. The DepEd received said reference copy on March 28, 2003.[17]

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[9] CA *rollo*, p. 50.

[10] CSC records, p. 1440.

[11] CA *rollo*, p. 49.

[12] *Id.* at 68.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 70.

[16] CSC records, p. 1480.

[17] *Id.*

On April 11, 2003, then DepEd Secretary Edilberto C. de Jesus filed a Petition for Review/Reconsideration[18] with the CSC. No copy of the pleading was served upon Cuanan.

On July 29, 2003, Secretary De Jesus filed a Supplemental Petition for Review/Reconsideration[19] reiterating the prayer for reversal of the resolution. Again, no copy of the pleading was served upon Cuanan.

Subsequently, pursuant to Division Special Order No. 001 series of 2003 dated June 18, 2003, Cuanan was reinstated to his former position as school principal effective April 30, 2003.[20] In Division Special Order No. 285, series of 2003 dated July 8, 2003, Cuanan was directed to return to duty.[21] Based thereon, Cuanan requested payment of salaries and his inclusion in the payroll, which the Division School Superintendent of Nueva Ecija duly endorsed on November 7, 2003.[22]

However, on October 22, 2004, the CSC issued Resolution No. 041147[23] setting aside CSC Resolution No. 030069 dated January 20, 2003. It found Cuanan guilty of Sexual Harassment, Grave Misconduct and Conduct Grossly Prejudicial to the Best Interest of the Service and meted out the penalty of dismissal from the service with forfeiture of retirement benefits, cancellation of his service eligibility, and perpetual disqualification from holding public office. Cuanan received a copy of the Resolution on November 9, 2004.[24]

Thirteen days later, or on November 22, 2004, Cuanan filed a petition for *certiorari*[25] with the CA seeking to annul Resolution

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[18] CSC records, p. 1482.

[19] *Id.* at 1446.

[20] CA *rollo*, p. 72.

[21] *Id.* at 73.

[22] *Id.* at 76.

[23] *Id.* at 3.

[24] *Id.* at 32.

[25] *Id.* at 2.

No. 041147, alleging that the CSC should not have entertained the petition for review/reconsideration since the DepEd was not the complainant or the party adversely affected by the resolution; that the petition for review/reconsideration was filed out of time; and that Cuanan was not furnished copies of the pleadings filed by the DepEd in violation of procedural due process.

The DepEd sought the dismissal of the petition on the ground of improper remedy, the mode of review from a decision of the CSC being a petition for review under Rule 43 of the Rules of Court.

On May 16, 2005, the CA rendered a Decision[26] granting the petition for *certiorari* and setting aside CSC Resolution No. 041147 dated October 12, 2004. The CA held that while a motion for reconsideration and a petition for review under Rule 43 were available remedies, Cuanan's recourse to a petition for *certiorari* was warranted, since the act complained of was patently illegal; that the CSC gravely abused its discretion in granting the petition for review/reconsideration filed by the DepEd without regard for Cuanan's fundamental right to due process, since he was not duly notified of the petition for review/ reconsideration, nor was he required by the CSC to file a comment thereon, much less, given a copy of the said petition; that the DepEd failed to establish that the resolution was not yet final and executory when it filed its petition for review/reconsideration.

DepEd filed a Motion for Reconsideration,[27] but the CA denied the same in its Resolution[28] dated July 18, 2005.

Hence, the present petition on the following grounds:

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WITH DUE RESPECT, THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN TAKING COGNIZANCE

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[26] *Supra*, note 1.

[27] CA *rollo*, p. 143.

[28] *Supra*, note 2.

OF THE PETITION IN CA-G.R. SP NO. 87499, THE SAME NOT BEING THE PROPER REMEDY IN ASSAILING CSC RESOLUTION NO. 041147 DATED OCTOBER 22, 2004.

II

WITH DUE RESPECT, THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN ADJUDGING CSC AS HAVING COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING RESOLUTION NO. 041147 DATED OCTOBER 22, 2004.[29]

DepEd contends that the CA should have dismissed outright the petition for *certiorari* because CSC decisions are appealable to the CA by petition for review under Rule 43; that the filing of a motion for reconsideration was a precondition to the filing of a petition for *certiorari* under Rule 65; that the DepEd, even if not the complainant, may question the resolution of the CSC; that Cuanan failed to prove that the CSC's petition for review/reconsideration was not seasonably filed; that even if Cuanan was not served a copy of the pleadings filed by the DepEd, the CSC was not bound by procedural rules.

Cuanan, on the other hand, contends that the DepEd cannot file a motion for reconsideration from the CSC Resolution exonerating him, since it is not the complainant in the administrative case and therefore not a party adversely affected by the decision therein; that even if DepEd may seek reconsideration of the CSC Resolution, the petition for review/ reconsideration was filed out of time; and that Cuanan's right to due process was violated when he was not given a copy of the pleadings filed by the DepEd or given the opportunity to comment thereon.

The Court finds it necessary, before delving on the grounds relied upon by the DepEd in support of the petition, to first resolve the question of whether the DepEd can seek reconsideration of the CSC Resolution exonerating Cuanan.

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[29] *Rollo*, p. 13.

In a long line of cases, beginning with *Civil Service Commission v. Dacoycoy*,[30] and reiterated in *Philippine National Bank v. Garcia, Jr.*,[31] the Court has maintained that the disciplining authority qualifies as a party adversely affected by the judgment, who can file an appeal of a judgment of exoneration in an administrative case. CSC Resolution No. 021600[32] allows the disciplining authority to appeal from a decision exonerating an erring employee, thus:

> Section 2. *Coverage and Definition of Terms*. — x x x (l) PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered or **to the disciplining authority in an appeal from a decision exonerating the said employee**. (Emphasis supplied)

Hence, Cuanan's exoneration under CSC Resolution No. 030069 may be subject to a motion for reconsideration by the DepEd which, as the appointing and disciplining authority, is a real party in interest.

Now, as to the merits of DepEd's arguments, the Court finds none.

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43[33]

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[30] 366 Phil. 86 (1999).

[31] 437 Phil. 289 (2002).

[32] Published on December 29, 2002, *Today*.

[33] 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, 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.

of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; **(c) when the writs issued are null and void**; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.[34] As will be shown forthwith, exception (c) applies to the present case.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, immediate recourse to the extraordinary remedy of *certiorari* is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object.[35] These

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x x x x x x x x x

SECTION 4. *Period of appeal*. — The appeal shall be taken within **fifteen (15) days** from notice of the award, judgment, final order or resolution, or from the date of its last publication, if 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. (Emphasis supplied)

[34] *Tanenglian, v. Lorenzo,* G.R. No. 173415, March 28, 2008, 550 SCRA 348, 367; *AMA Computer College-Santiago City, Inc. v. Nacino,* G.R. No. 162739, February 12, 2008, 544 SCRA 502, 509*; Hanjin* Engineering *and Construction Co., Ltd. v. Court of Appeals*, ibid; *Chua v. Santos*, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 374-375; *Metropolitan Manila Development Authority v. Jancom Environmental Corporation*, 425 Phil. 961, 974 (2002).

[35] *Aguilar v. Manila Banking Corporation*, G.R. No.157911, September 19, 2006, 502 SCRA 354, 373; *Tan, Jr. v. Sandiganbayan*, 354 Phil. 463, 469-470 (1998); *Tan v. Court of Appeals*, 341 Phil. 570, 576-577 (1997).

exceptions find application to Cuanan's petition for *certiorari* in the CA.

At any rate, Cuanan's petition for *certiorari* before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly within the 15-day reglementary period for the filing of a petition for review.[36] Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice.[37]

Furthermore, CSC Resolution No. 030069 has long become final and executory. It must be noted that the records show that copies of CSC Resolution No. 030069 were duly sent to the parties, including DepEd, on January 23, 2003.[38] Cuanan received a copy thereof on January 31, 2003,[39] while the DepEd requested a copy sometime in March 2003, or about two months later. Under the Rules of Evidence, it is presumed that official duty has been regularly performed, unless contradicted.[40] This presumption includes that of regularity of service of judgments, final orders or resolutions.

Consequently, the burden of proving the irregularity in official conduct — that is, non-receipt of the duly sent copy of CSC

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[36] See *Philippine Journalists, Inc. v. National Labor Relations Commission*, G.R. No. 166421, September 5, 2006, 501 SCRA 75-87; *De los Santos v. Court of Appeals*, G.R. No. 147912, April 26, 2006, 488 SCRA 351, 356.

[37] *Verde v. Macapagal,* G.R. No. 151342, June 23, 2005, 461 SCRA 97, 104; *Oaminal v. Castillo,* 459 Phil. 542, 556 (2003).

[38] *Supra* note 10.

[39] CA *rollo,* p. 49.

[40] Section 3, Rule 131 of the Rules of Court provides:

Sec. 3. *Disputable Presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(m) That official duty has been regularly performed.

Resolution No. 030069 — is on the part of the DepEd, which in the present case clearly failed to discharge the same.[41] Thus, the presumption stands that CSC Resolution No. 030069 dated January 20, 2003 had already become final and executory when the DepEd filed its Petition for Review/Reconsideration on April 11, 2003, more than two months later.

It is elementary that once judgment has become final and executory, it becomes immutable and can no longer be amended or modified. In *Gallardo-Corro v. Gallardo*,[42] this Court held:

> Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[43]

Moreover, while it is true that administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements, they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them.[44] **The relative**

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[41] See *Forever Security & General Services v. Flores*, G.R. No. 147961, September 7, 2007, 532 SCRA 454, 467; *Masagana Concrete Products v. National Labor Relations Commission,* 372 Phil. 459, 473 (1999).

[42] 403 Phil. 498 (2001).

[43] *Id.* at 511.

[44] *Octava v. Commission on Elections*, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 763; *Busuego v. Court of Appeals*, G.R. No. 95326, March 11,

freedom of the CSC from the rigidities of procedure cannot be invoked to evade what was clearly emphasized in the landmark case of *Ang Tibay v. Court of Industrial Relations:*[45] that all administrative bodies cannot ignore or disregard the fundamental and essential requirements of due process.

Furthermore, Section 43.A.[46] of the Uniform Rules in Administrative Cases in the Civil Service provides:

> Section 43.A. *Filing of Supplemental Pleadings.* — **All pleadings filed by the parties with the Commission, shall be copy furnished the other party with proof of service filed with the Commission**.
>
> Any supplemental pleading to supply deficiencies in aid of an original pleading but which should not entirely substitute the latter can be filed only upon a favorable action by the Commission on the motion of a party to the case. The said motion should be submitted within five (5) days from receipt of a copy of the original pleading and it is discretionary upon the Commission to allow the same or not or even to consider the averments therein.(Emphasis supplied)

Cuanan undoubtedly was denied procedural due process. He had no opportunity to participate in the proceedings for the petition for review/ reconsideration filed by the DepEd, since no copy of the pleadings filed by the DepEd were served upon him or his counsel; nor was he even required by the CSC to file his comments thereon. Considering that pleadings filed by the DepEd were not served upon Cuanan, they may be treated as mere scraps of paper which should not have merited the attention or consideration of the CSC.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 87499 are *AFFIRMED*.

1999, 304 SCRA 473, 480; *Adamson & Adamson, Inc. v. Amores*, G.R. No. L-58292, July 23, 1987, 152 SCRA 237.

[45] 69 Phil. 635 (1940).

[46] As added by CSC Memorandum Circular No. 2, Series of 2003, dated April 21, 2003; Michael Anthony M. Clemente, *Handbook on Offenses, Penalties and Procedure in the URACCS*, 2007 Ed., p. 283.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona and *Azcuna, JJ.,* on official leave.

EN BANC

[G.R. No. 173052. December 16, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGELIO PELAGIO *y* BERMUDO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN DETERMINING THE INNOCENCE OR GUILT OF AN ACCUSED IN RAPE CASES. — To determine the innocence or guilt of an accused in a rape case, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. As a result of these guiding principles, credibility becomes the single most important issue.

2. ID.; ID.; DENIAL; CANNOT TAKE PRECEDENCE OVER THE POSITIVE TESTIMONY OF THE OFFENDED PARTY. — [T]he defense of denial x x x is inherently a weak defense. Mere denial of involvement in a crime cannot take precedence over the positive testimony of the offended party.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DELAY IN MAKING A CRIMINAL ACCUSATION, IF SUCH DELAY IS SATISFACTORILY EXPLAINED. — [T]he Court has constantly ruled that: "x x x [D]elay in making a criminal accusation [does not] impair the credibility of a witness if such delay is satisfactorily explained. In *People v. Coloma*, x x x the Court adverted to the father's moral and physical control over the young complainant in explaining the delay of eight years before the complaint against her father was made. In this case, [complainant] must have been overwhelmed by fear and confusion, and shocked that her own father had defiled her. x x x She also testified that she was afraid to tell her mother because the latter might be angered. x x x Indeed, a survey conducted by the University of the Philippines Center for Women's Studies showed that victims of rape committed by their fathers took much longer in reporting the incidents to the authorities than did other victims. Many factors account for this difference: the fact that the father lives with the victim and constantly exerts moral authority over her, the threat he might make against her, the victim's fear of her mother and other relatives."

4. ID.; ID.; ID.; THE TESTIMONY OF THE RAPE VICTIM, STANDING ALONE, CAN BE MADE THE BASIS OF CONVICTION IF SUCH TESTIMONY IS CREDIBLE. — Case law has it that in view of the intrinsic nature of rape, the only evidence that can be offered to prove the guilt of the offender is the testimony of the offended party. Even absent a medical certificate, her testimony, standing alone, can be made the basis of conviction if such testimony is credible. Moreover, the absence of external injuries does not negate rape. In fact, even the absence of spermatozoa is not an essential element of rape. This is because in rape, the important consideration is not the emission of semen but the penetration of the female genitalia by the male organ.

5. CRIMINAL LAW; RAPE; PENALTY; CASE AT BAR. — Article 266-B of the Revised Penal Code provides that the death penalty shall be imposed if the crime of rape is committed with any aggravating/qualifying circumstances enumerated thereunder, one of which is when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third

civil degree, or the common-law spouse of the parent of the victim. The three separate Informations filed in this case all contained the allegations of AAA's minority and her relationship with appellant, which were proved by competent evidence during the trial. Hence, the imposition of the death penalty was proper. However, with the enactment of Republic Act (R.A.) No. 9346, effective June 24, 2006, prohibiting the imposition of the death penalty, the penalty to be imposed on appellant in this case is *reclusion perpetua*, without eligibility for parole, as provided in Section 2, paragraph (a) thereof. The Court has ruled that R.A. No. 9346 has retroactive effect, to wit: The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code, which provides as follows: x x x However, appellant is not eligible for parole because Section 3 of R.A. No. 9346 provides that "persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua by reason of the law, shall not be eligible for parole."

APPEARANCES OF COUNSEL

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

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Rogelio Pelagio (appellant) was charged with three counts of Rape by his own daughter, AAA,[1] under three separate Informations, to wit:

[1] In line with the Court's ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 4), the real names of the victims will not be disclosed; instead, fictitious initials will be used to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld; see also Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

Crim. Case No. 98-7037:

The undersigned 4th Assistant Provincial Prosecutor of XXX, upon a sworn complaint originally filed by the private offended party, accuses ROGELIO PELAGIO *Y* BERMUDO of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about the 30th day of August, 1997 at around 10:00 P.M. in the evening thereof, at Bgy. XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, being the natural father of herein victim, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one, AAA, her daughter, a minor-15 years old, against her will, to her prejudice.

CONTRARY TO LAW.[2]

Crim. Case No. 98-7038

The undersigned Assistant Provincial Prosecutor of XXX, upon a sworn complaint originally filed by the private offended party, accuses ROGELIO PELAGIO *Y* BERMUDO of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about the 22nd day of August, 1997, at around 9:30 in the evening thereof, at Bgy. XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, being the natural father of herein victim, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, her daughter, a minor-15 years old, against her will, to her prejudice.

ACTS CONTRARY TO LAW.[3]

Crim. Case No. 98-7142

The undersigned Assistant Provincial Prosecutor of XXX upon a sworn complaint filed by the offended party, accuses ROGELIO PELAGIO *Y* BERMUDO of Zone XXX, Barangay XXX of the crime of RAPE, defined and penalized under RA 7610 in relation to Art.

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[2] Records, Volume I, p. 1.

[3] *Id.*, Volume II, p. 2.

335 of the Revised Penal Code and further amended by RA 7659, committed as follows:

That on or about 9:00 o'clock in the evening of October 18, 1997 at Barangay XXX, Philippines, the above-named accused with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, his 15-year old daughter against her will and without her consent as shown by the medical certificate attached and marked as Annex "A" of the complaint to the damage and prejudice of the latter.

CONTRARY TO LAW.[4]

Appellant was duly arraigned and pleaded "not guilty" on all counts, after which trial ensued.

In a Judgment dated February 19, 1999, the Regional Trial Court (RTC) of Naga City, Branch 25, found appellant guilty of Rape, as follows:

WHEREFORE, premises considered, this court finds the accused ROGELIO PELAGIO *Y* BERMUDO GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 in Criminal Cases Nos. 98-7037, 98-7038 and 98-7142, and hereby sentences the said accused to suffer the penalty of DEATH for each of the offense committed; accused Rogelio Pelagio y Bermudo is hereby ordered to pay the victim AAA the sum of ₱50,000.00 for each of the offense committed, by way of moral damages. To serve as a deterrent and a warning to fathers who [sic] may have bestial desire against their children, the accused is also ordered to pay the sum of ₱75,000.00 by way of exemplary damages; and for destroying the future of a daughter who was a consistent honor student when the incident happened, now could only pass her subjects due to her harrowing and traumatic experience in the hands of her father, the latter is further ordered to pay the victim the total sum of ₱300,000.00 for the three (3) offenses committed by way of consequential damages to help her secure a brighter future, and to pay the costs.

SO ORDERED.[5]

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[4] Records, Volume III, p. 1.

[5] *Id.*, Volume I, p. 81.

In view of the death penalty imposed, the case was brought to this Court on automatic review. Pursuant to *People v. Mateo*,[6] the case was transferred to the Court of Appeals (CA) for appropriate action and disposition.[7]

On March 31, 2006, the CA affirmed with modification the RTC Decision. The dispositive portion of the CA Decision[8] provides:

> WHEREFORE, premises considered, the Judgment appealed from convicting accused-appellant Rogelio Pelagio *y* Bermudo of three (3) counts of rape and sentencing him to suffer the supreme penalty of death in each count is hereby AFFIRMED with MODIFICATION in that for each count of rape, accused-appellant ROGELIO PELAGIO *Y* BERMUDO is ordered to pay private complainant AAA ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.
>
> In accordance with A.M. No. 00-5-03-SC amending the revised Rules of Criminal Procedure, let the entire record of the case be immediately elevated to the Supreme Court for review.
>
> SO ORDERED.[9]

The Office of the Solicitor General and appellant both manifested that they would not file supplemental briefs and instead, adopt the briefs they had previously filed.

In the Accused-Appellant's Brief, appellant sets forth the following assignment of errors:

I

THE TRIAL COURT ERRED IN COMPLETELY BELIEVING THE HIGHLY INCREDIBLE, UTTERLY BASELESS AND TOTALLY UNFOUNDED ACCUSATION OF PRIVATE COMPLAINANT IN

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

[7] CA *rollo*, p. 147, Resolution dated November 9, 2004.

[8] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao, concurring, *rollo*, p. 3.

[9] CA *rollo*, p. 180.

CRIMINAL CASE NOS. 98-7037, 98-7038 AND 98-7142, NOT TO MENTION THE LONG DELAY IN REPORTING THE SAME.

II

THE TRIAL COURT ERRED IN NOT BELIEVING THE DENIAL INTERPOSED BY ACCUSED-APPELLANT RELATIVE TO THE CRIMES CHARGED, NAY THE FACT THAT HIS WIFE WAS MOTIVATED BY ILL WILL IN FILING THE SAME.

III

THE TRIAL COURT ERRED IN NOT ABSOLVING ACCUSED-APPELLANT OF THE OFFENSES CHARGED DESPITE WANT OF CONCLUSIVE EVIDENCE TO PROVE THE SAME AS PER TESTIMONY OF THE PHYSICIAN WHO EXAMINED PRIVATE COMPLAINANT.

IV

THE TRIAL COURT ERRED IN RENDERING A JUDGMENT OF CONVICTION IN CRIMINAL CASE NOS. 98-7037, 98-7038 AND 98-7142 NOTWITHSTANDING THE FACT THAT THE GUILT OF ACCUSED-APPELLANT WAS NOT PROVED BEYOND REASONABLE DOUBT.[10]

Appellant's defense is denial. He claims that it was his estranged wife, BBB, the mother of AAA, who instigated the filing of the complaint against him after he left BBB in 1986. Appellant points out that there were inconsistencies and flaws in the testimony of AAA, which cast doubt on the credibility of her accusation.

The RTC had dismissed appellant's defense and given credence to the testimony of AAA, ruling in this wise —

> In the case at bar, the records are bereft of any evil motive which would move AAA to charge her own father with three (3) counts of rape. Accused alleged anger of his wife as an act of revenge instigated her daughter to file these heinous crimes against her father, cannot be given scant appreciation by the court. The records show that although BBB, the mother was with her daughter AAA when the

[10] CA *rollo*, pp. 51-52.

complaints were lodged against the accused, yet the very complaint (Exhibits "E", "F" and "G") were signed by AAA alone.

x x x x x x x x x.[11]

For its part, the CA also gave credence to AAA's testimony, stating that:

> In narrating her painful and harrowing unspeakable experience under the unwelcome penile invasion of her own father during those three incidents, AAA's testimony was spontaneous, consistent and categorical. The trial court found her credible and gave full faith and credit to her testimony as sufficient to sustain the conviction of the accused-appellant of rape in all three counts, thus:
>
> x x x x x x x x x.[12]

The Court has reviewed the records of this case, including the respective pieces of evidence presented by the prosecution and the defense, and finds no reason to overturn the verdict of guilt handed down by the RTC and affirmed by the CA.

To determine the innocence or guilt of an accused in a rape case, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[13] As a result of these guiding principles, credibility becomes the single most important issue.[14]

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[11] Records, p. 80.

[12] CA *rollo*, p. 169.

[13] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 373.

[14] *People v. Andales*, G.R. Nos. 152624-25, February 5, 2004, 422 SCRA 253, 261.

AAA categorically testified that her father sexually abused her on the dates stated in the Informations.

As regards the rape that occurred on August 22, 1997, AAA testified:

Q Why were you awakened?
A I was awakened when I saw my father without his shorts on and he was trying to remove my shorts.

x x x x x x x x x

Q What did he do with your underwear, if any?
A He removed my panty, sir.

x x x x x x x x x

Q When your father was removing your panty as well as your shorts, what was your relative position"
A I was made to lie down face upward.

Q So, what happened next?
A Then he removed his brief and held my private parts.

Q What private parts did his hold?
A He held my both hands, sir.

Q So, it was not your private parts?
A Yes, sir, he held my both hands, then he lied on top of me.

Q What happened next after he lied on top of you?
A I tried to stand up telling my father not to do such thing because as expected, he should be the one to watch over me because my mother was in Fundado.

x x x x x x x x x

Q After that, after your father told you that, what happened next?
A He did not listen to me, he held my both hands and he lied on top of me

Q What happened next?
A He exposed his penis, then spread my legs and inserted his penis to my vagina.

Q What was the condition of the penis of your father?
A I did not see it, sir.

Q When he inserted his penis into your vagina, what did you feel?
A I felt pain, sir.

Q After he inserted his penis into your vagina, what happened next?
A He made a push and pull movement, sir,

Q While he was making this push and pull movement, what did you feel?
A I felt pain, sir.

x x x x x x x x x

Q Alright, after the accused made a push and pull movement while his penis was at your vagina, what happened next?
A Then he suddenly pulled out his penis from my vagina.

Q After he pulled out his penis from your vagina, what happened next?
A He put on his shorts, sir.[15]

AAA's testimony regarding the subsequent rapes on August 30 and October 18, 1997 were also of the same import.

As held in *People v. Maglente*:[16]

When the offended party is a young and immature girl testifying against a parent, courts are inclined to lend credence to her version of what transpired. Youth and immaturity are given full weight and credit. Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll. It is unlikely that a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death.[17]

Like the RTC and the CA, the Court has no reason to doubt AAA's credibility. Her testimony was candid and straightforward.

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[15] TSN, September 16, 1998, pp. 13-17.

[16] G.R. No. 179712, June 27, 2008.

[17] *People v. Maglente*, *supra* note 16.

Appellant interposed the defense of denial, which is inherently a weak defense. Mere denial of involvement in a crime cannot take precedence over the positive testimony of the offended party.[18]

The fact that it took a long time for AAA to report her father's transgressions does not mitigate her credibility. In the first place, appellant threatened to kill AAA and her mother.[19] Moreover, telling people that one has been raped by her own father is not easy to do, and a girl of AAA's age cannot be expected to know how to go about reporting crimes to the proper authorities.[20] Thus, the Court has constantly ruled that:

> x x x [D]elay in making a criminal accusation [does not] impair the credibility of a witness if such delay is satisfactorily explained. In *People v. Coloma*, x x x the Court adverted to the father's moral and physical control over the young complainant in explaining the delay of eight years before the complaint against her father was made. In this case, [complainant] must have been overwhelmed by fear and confusion, and shocked that her own father had defiled her. x x x She also testified that she was afraid to tell her mother because the latter might be angered x x x. Indeed, a survey conducted by the University of the Philippines Center for Women's Studies showed that victims of rape committed by their fathers took much longer in reporting the incidents to the authorities than did other victims. Many factors account for this difference: the fact that the father lives with the victim and constantly exerts moral authority over her, the threat he might make against her, the victim's fear of her mother and other relatives.[21]

The Court also cannot subscribe to appellant's argument that AAA was merely instigated by her mother BBB to file the complaints against him due to BBB's anger with him when he

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[18] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 185.

[19] TSN, September 16, 1998, p. 16.

[20] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 425.

[21] *Ibid.*, citing *People v. Bugarin*, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384, 398-399.

left his family and went to Manila. Suffice it to say that such argument is not uncommon in rape cases. The Court has repeatedly held that it is unnatural for a parent to use her offspring as an instrument of malice, especially if it will subject them to embarrassment and even stigma. No mother in her right mind would expose her daughter to the disgrace and trauma resulting from a prosecution for rape if she was not genuinely motivated by a desire to incarcerate the person responsible for her daughter's defilement.[22] Appellant miserably failed to show that her "anger" was such that BBB would senselessly use her daughter as an instrument of revenge against him and subject her to the trauma of being internally examined by a doctor and exposed to the rigors of police and court proceedings, not to mention the ignominy attached to a rape victim by insensitive neighbors and townmates.

Appellant harps on the alleged statements of the examining physician that there were no external injuries on AAA's body or that the laceration on her hymen could be caused by many factors. Case law has it that in view of the intrinsic nature of rape, the only evidence that can be offered to prove the guilt of the offender is the testimony of the offended party. Even absent a medical certificate, her testimony, standing alone, can be made the basis of conviction if such testimony is credible.[23] Moreover, the absence of external injuries does not negate rape.[24] In fact, even the absence of spermatozoa is not an essential element of rape. This is because in rape, the important consideration is not the emission of semen but the penetration of the female genitalia by the male organ.[25]

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[22] *People v. Reyes*, G.R. No. 167180, January 25, 2007, 512 SCRA 712, 720.

[23] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 402.

[24] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 363, 381.

[25] *People v. Juntilla*, G.R. No. 130604, September 16, 1999, 314 SCRA 568, 583.

All told, the prosecution was able to prove beyond reasonable doubt the commission of the heinous crimes alleged in this case.

Article 266-B of the Revised Penal Code provides that the death penalty shall be imposed if the crime of rape is committed with any aggravating/qualifying circumstances enumerated thereunder, one of which is when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The three separate Informations filed in this case all contained the allegations of AAA's minority and her relationship with appellant, which were proved by competent evidence during the trial. Hence, the imposition of the death penalty was proper.

However, with the enactment of Republic Act (R.A.) No. 9346, effective June 24, 2006, prohibiting the imposition of the death penalty, the penalty to be imposed on appellant in this case is *reclusion perpetua*, without eligibility for parole, as provided in Section 2, paragraph (a) thereof. The Court has ruled that R.A. No. 9346 has retroactive effect, to wit:

> The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code, which provides as follows:
>
> x x x x x x x x x
>
> However, appellant is not eligible for parole because Section 3 of R.A. No. 9346 provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to reclusion perpetua by reason of the law, shall not be eligible for parole."[26]

On the award of damages for each count of rape, the CA modified the award made by the RTC. The Court modifies it

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[26] *People v. Tinsay*, G.R. No. 167383, September 22, 2008, citing *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704; see also *People v. Castro*, G.R. No. 172370, October 6, 2008.

further. The CA's award of civil indemnity in the amount of ₱75,000.00 is proper inasmuch as the death penalty was originally imposed on appellant. The award of exemplary damages in the amount of ₱25,000.00 is likewise proper. As regards moral damages, however, the CA affirmed the RTC's award of ₱50,000.00. This should be increased to ₱75,000.00 in line with prevailing jurisprudence.[27]

WHEREFORE, the Court of Appeals Decision dated March 31, 2006 is *AFFIRMED* with *MODIFICATION* in that appellant is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages, for each count of rape or a total of ₱525,000.00.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.*, concur.

Corona and *Azcuna, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 175339. December 16, 2008]

PREMIERE DEVELOPMENT BANK, *petitioner, vs.* **ALFREDO C. FLORES, in his Capacity as Presiding Judge of Regional Trial Court of Pasig City, Branch 167, ARIZONA TRANSPORT CORPORATION and PANACOR MARKETING CORPORATION,** *respondents.*

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[27] *People v. Ramos*, G.R. No. 179030, June 12, 2008; *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 665.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION SHALL ISSUE AS A MATTER OF RIGHT UPON A FINAL AND EXECUTORY JUDGMENT; EXCEPTIONS. — A judgment becomes "final and executory" by operation of law. In such a situation, the prevailing party is entitled to a writ of execution, and issuance thereof is a ministerial duty of the court. This policy is clearly and emphatically embodied in Rule 39, Section 1 of the Rules of Court, to wit: "SEC. 1. *Execution upon judgments or final orders. — Execution shall issue as a matter of right,* on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party. The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution." Jurisprudentially, the Court has recognized certain exceptions to the rule as where in cases of special and exceptional nature it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; TO APPLY, THE TWO DEBTS MUST BE LIQUIDATED AND DEMANDABLE. — For compensation to apply, among other requisites, the two debts must be liquidated and demandable already. A distinction must be made between a debt and a mere claim. A debt is an amount actually ascertained. It is a claim which has been formally passed upon by the courts or quasi-judicial bodies to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of

a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt. Absent, however, any such categorical admission by an obligor or final adjudication, no legal compensation or off-set can take place. Unless admitted by a debtor himself, the conclusion that he is in truth indebted to another cannot be definitely and finally pronounced, no matter how convinced he may be from the examination of the pertinent records of the validity of that conclusion the indebtedness must be one that is admitted by the alleged debtor or pronounced by final judgment of a competent court.

3. REMEDIAL LAW; CIVIL PROCEDURE; COUNTER-CLAIM; WHEN CONSIDERED COMPULSORY. — Under Section 7, Rule 6 of the 1997 Rules of Civil Procedure, a counterclaim is compulsory when its object "arises out of or is necessarily connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction". In *Quintanilla v. CA* and reiterated in *Alday v. FGU Insurance Corporation*, the "compelling test of compulsoriness" characterizes a counterclaim as compulsory if there should exist a "logical relationship" between the main claim and the counterclaim. There exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; DISSOLUTION; THE LAW ALLOWS A TRUSTEE TO MANAGE THE AFFAIRS OF THE CORPORATION IN LIQUIDATION, AND THE DISSOLUTION OF THE CORPORATION WOULD NOT SERVE AS AN EFFECTIVE BAR TO THE ENFORCEMENT OF RIGHTS FOR OR AGAINST IT. — [T]he law specifically allows a trustee to manage the affairs of the corporation in liquidation, and the dissolution of the corporation would not serve as an effective bar to the

enforcement of rights for or against it. As early as 1939, this Court held that, although the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences, there is no time limit within which the trustees must complete a liquidation placed in their hands. What is provided in Section 122 of the Corporation Code is that the conveyance to the trustees must be made within the three-year period. But it may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The trustees to whom the corporate assets have been conveyed pursuant to the authority of Section 122 may sue and be sued as such in all matters connected with the liquidation. Furthermore, Section 145 of the Corporation Code clearly provides that "no right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation." Even if no trustee is appointed or designated during the three-year period of the liquidation of the corporation, the Court has held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; CONSIGNATION; DEFINED. — Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment, and it generally requires a prior tender of payment.

APPEARANCES OF COUNSEL

Tagalog De Villa & Associates for petitioner.
Manuel S. Fonacier, Jr. for respondents.

D E C I S I O N

TINGA, *J.*:

This is a Rule 45 petition for review[1] of the Court of Appeals' decision[2] in CA-G.R. SP No. 92908 which affirmed the Regional Trial Court's (RTC's) orders[3] granting respondent corporations' motion for execution of the Court's 14 April 2004 decision in G.R. No. 159352[4] and denying[5] petitioner Premiere Development Bank's motion for reconsideration, as well as the appellate court's resolution[6] denying Premiere Development Bank's motion for reconsideration.

The factual antecedents of the case, as found by the Court in G.R. No. 159352, are as follows:

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[1] *Rollo,* pp. 3-40.

[2] *Id.* at 45-61. Penned by Associate Justice Mariano Del Castillo; concurred in by Associate Justices Conrado Vasquez, Jr. and Vicente Veloso. The dispositive portion of the decision reads as follows:

> **WHEREFORE**, the instant petition is **DISMISSED**. Accordingly, the assailed orders are **AFFIRMED**.
>
> **SO ORDERED**.

[3] *Id.* at 109-110. Penned by Judge Alfredo Flores. The dispositive portion reads as follows:

> WHEREFORE, premises considered, let a writ of execution issue for the enforcement of the Decision of this (C)ourt on 18 June 2003, as affirmed but modified by the Supreme Court in G.R. No. 159352 under the Decision rendered on 14 April 2004, on the payment of the following, namely: Php 500,000.00 as exemplary damages; Php 100,000.00 as attorney's fees; and Php 200,000.00, as temperate damages, to be accordingly implemented by the Deputy Sheriff of this Court.
>
> SO ORDERED.

[4] *Premiere Development Bank v. Court of Appeals,* G.R. No. 159352, 14 April 2004, 427 SCRA 686.

[5] *Rollo,* p. 111.

[6] *Id.* at 63.

The undisputed facts show that on or about October 1994, Panacor Marketing Corporation (Panacor for brevity), a newly-formed corporation, acquired an exclusive distributorship of products manufactured by Colgate Palmolive Philippines, Inc. (Colgate for short). To meet the capital requirements of the exclusive distributorship, which required an initial inventory level of ₱7.5 million, Panacor applied for a loan of ₱4.1 million with Premiere Development Bank. After an extensive study of Panacor's creditworthiness, Premiere Bank rejected the loan application and suggested that its affiliate company, Arizona Transport Corporation (Arizona for short), should instead apply for the loan on condition that the proceeds thereof shall be made available to Panacor. Eventually, Panacor was granted a ₱4.1 million credit line as evidenced by a Credit Line Agreement. As suggested, Arizona, which was an existing loan client, applied for and was granted a loan of ₱6.1 million, ₱3.4 million of which would be used to pay-off its existing loan accounts and the remaining ₱2.7 million as credit line of Panacor. As security for the ₱6.1 million loan, Arizona, represented by its Chief Executive Officer Pedro Panaligan and spouses Pedro and Marietta Panaligan in their personal capacities, executed a Real Estate Mortgage against a parcel of land covered by TCT No. T-3475 as per Entry No. 49507 dated October 2, 1995.

Since the ₱2.7 million released by Premiere Bank fell short of the ₱4.1 million credit line which was previously approved, Panacor negotiated for a take-out loan with IBA-Finance Corporation (hereinafter referred to as IBA-Finance) in the sum of ₱10 million, ₱7.5 million of which will be released outright in order to take-out the loan from Premiere Bank and the balance of ₱2.5 million (to complete the needed capital of ₱4.1 million with Colgate) to be released after the cancellation by Premiere of the collateral mortgage on the property covered by TCT No. T-3475. Pursuant to the said take-out agreement, IBA-Finance was authorized to pay Premiere Bank the prior existing loan obligations of Arizona in an amount not to exceed ₱6 million.

On October 5, 1995, Iba-Finance sent a letter to Ms. Arlene R. Martillano, officer-in-charge of Premiere Bank's San Juan Branch, informing her of the approved loan in favor of Panacor and Arizona, and requesting for the release of TCT No. T-3475. Martillano, after reading the letter, affixed her signature of conformity thereto and sent the original copy to Premiere Bank's legal office. x x x

On October 12, 1995, Premiere Bank sent a letter-reply to [IBA]-Finance, informing the latter of its refusal to turn over the requested documents on the ground that Arizona had existing unpaid loan obligations and that it was the bank's policy to require full payment of all outstanding loan obligations prior to the release of mortgage documents. Thereafter, Premiere Bank issued to IBA-Finance a Final Statement of Account showing Arizona's total loan indebtedness. On October 19, 1995, Panacor and Arizona executed in favor of IBA-Finance a promissory note in the amount of ₱7.5 million. Thereafter, IBA-Finance paid to Premiere Bank the amount of ₱6,235,754.79, representing the full outstanding loan account of Arizona. Despite such payment, Premiere Bank still refused to release the requested mortgage documents specifically, the owner's duplicate copy of TCT No. T-3475.

On November 2, 1995, Panacor requested IBA-Finance for the immediate approval and release of the remaining ₱2.5 million loan to meet the required monthly purchases from Colgate. IBA-Finance explained however, that the processing of the ₱2.5 million loan application was conditioned, among others, on the submission of the owner's duplicate copy of TCT No. 3475 and the cancellation by Premiere Bank of Arizona's mortgage. Occasioned by Premiere Bank's adamant refusal to release the mortgage cancellation document, Panacor failed to generate the required capital to meet its distribution and sales targets. On December 7, 1995, Colgate informed Panacor of its decision to terminate their distribution agreement.

On March 13, 1996, Panacor and Arizona filed a complaint for specific performance and damages against Premiere Bank before the Regional Trial Court of Pasig City, docketed as Civil Case No. 65577.

On June 11, 1996, IBA-Finance filed a complaint-in-intervention praying that judgment be rendered ordering Premiere Bank to pay damages in its favor.

On May 26, 1998, the trial court rendered a decision in favor of Panacor and IBA-Finance, the decretal portion of which reads: x x x

Premiere Bank appealed to the Court of Appeals contending that the trial court erred in finding, *inter alia*, that it had maliciously downgraded the credit-line of Panacor from ₱4.1 million to ₱2.7 million.

In the meantime, a compromise agreement was entered into between IBA-Finance and Premiere Bank whereby the latter agreed to return without interest the amount of ₱6,235,754.79 which IBA-Finance earlier remitted to Premiere Bank to pay off the unpaid loans of Arizona. On March 11, 1999, the compromise agreement was approved.

On June 18, 2003, a decision was rendered by the Court of Appeals which affirmed with modification the decision of the trial court, the dispositive portion of which reads:[7] x x x

Incidentally, respondent corporations received a notice of sheriff's sale during the pendency of G.R. No. 159352. Respondent corporations were able to secure an injunction from the RTC but it was set aside by the Court of Appeals in a decision dated 20 August 2004.[8] The appellate court denied respondent corporations' motion for reconsideration in a resolution dated 5 November 2004.[9]

The Court, in a resolution dated 16 February 2005, did not give due course to the petition for review of respondent corporations as it did not find any reversible error in the decision of the appellate court.[10] After the Court had denied with finality the motion for reconsideration,[11] the mortgaged property was purchased by Premiere Development Bank at the foreclosure sale held on 19 September 2005 for ₱6,600,000.00.[12]

Respondent corporations filed a motion for execution dated 25 August 2005[13] asking for the issuance of a writ of execution of our decision in G.R. No. 159352 where we awarded

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[7] *Premiere Development Bank v. Court of Appeals*, *supra* note 4 at 689-693.

[8] *Rollo*, pp. 127-132.

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

[10] *Id.* at 147.

[11] *Id.* at 148.

[12] *Id.* at 151-152.

[13] CA *rollo*, pp. 113-117.

₱800,000.00 as damages in their favor.[14] The RTC granted the writ of execution sought. The Court of Appeals affirmed the order.

Hence, the present petition for review.

The only question before us is the propriety of the grant of the writ of execution by the RTC.

Premiere Development Bank argues that the lower courts should have applied the principles of compensation or set-off as the foreclosure of the mortgaged property does not preclude it from filing an action to recover any deficiency from respondent corporations' loan. It allegedly did not file an action to recover the loan deficiency from respondent corporations because of the pending Civil Case No. MC03-2202 filed by respondent corporations before the RTC of Mandaluyong City entitled *Arizona Transport Corp. v. Premiere Development Bank.* That case puts into issue the validity of Premiere Development Bank's monetary claim against respondent corporations and the subsequent foreclosure sale of the mortgaged property. Premiere Development Bank allegedly had wanted to wait for the resolution of the civil case before it would file its deficiency claims against respondent corporations. Moreover, the execution of our decision in G.R. No. 159352 would allegedly be iniquitous and unfair since respondent corporations are already in the process of winding up.[15]

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[14] *Premiere Development Bank v. Court of Appeals*, *supra* note 4 at 700. The dispositive portion of the Court's decision reads as follows:

> **WHEREFORE**, the petition is **DENIED**. The Decision dated June 18, 2003 of the Court of Appeals in CA-G.R. CV No. 60750, ordering Premiere Bank to pay Panacor Marketing Corporation ₱500,000.00 as exemplary damages, ₱100,000.00 as attorney's fees, and costs, is **AFFIRMED**, with the **MODIFICATION** that the award of ₱4,520,000.00 as actual damages is **DELETED** for lack of factual basis. In lieu thereof, Premiere Bank is ordered to pay Panacor ₱200,000.00 as temperate damages.
>
> **SO ORDERED**.

[15] *Rollo*, pp. 134-135.

The Court finds the petition unmeritorious.

A judgment becomes "final and executory" by operation of law. In such a situation, the prevailing party is entitled to a writ of execution, and issuance thereof is a ministerial duty of the court.[16] This policy is clearly and emphatically embodied in Rule 39, Section 1 of the Rules of Court, to wit:

> SECTION 1. *Execution upon judgments or final orders.* †**Execution shall issue as a matter of right**, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.
>
> If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.
>
> The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Emphasis supplied.)

Jurisprudentially, the Court has recognized certain exceptions to the rule as where in cases of special and exceptional nature it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.[17]

None of these exceptions avails to stay the execution of this Court's decision in G.R. No. 159352. Premiere Development Bank has failed to show how injustice would exist in executing the judgment other than the allegation that respondent corporations

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[16] *City of Manila v. Court of Appeals*, G.R. No. 100626, 29 November 1991, 204 SCRA 362, 366.

[17] *Cruz v. Leabres*, 314 Phil. 26, 34 (1995), citing *Lipana v. Development Bank of Rizal*, 154 SCRA 257 (1987).

are in the process of winding up. Indeed, no new circumstance transpired after our judgment had become final that would render the execution unjust.

The Court cannot give due course to Premiere Development Bank's claim of compensation or set-off on account of the pending Civil Case No. MC03-2202 before the RTC of Mandaluyong City. For compensation to apply, among other requisites, the two debts must be liquidated and demandable already.[18]

A distinction must be made between a debt and a mere claim. A debt is an amount actually ascertained. It is a claim which has been formally passed upon by the courts or quasi-judicial bodies to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt.[19] Absent, however, any such categorical admission by an obligor or final adjudication, no legal compensation or off-set can take place. Unless admitted by a debtor himself, the conclusion that he is in truth indebted to another cannot be definitely and finally pronounced, no matter how convinced he may be from the examination of the pertinent records of the

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[18] Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. (1159)

Art. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

[19] *Vallarta v. Court of Appeals*, G.R. No. L-36543, 27 July 1988, 163 SCRA 587, 594.

validity of that conclusion the indebtedness must be one that is admitted by the alleged debtor or pronounced by final judgment of a competent court.[20] At best, what Premiere Development Bank has against respondent corporations is just a claim, not a debt. At worst, it is a speculative claim.

The alleged deficiency claims of Premiere Development Bank should have been raised as a compulsory counterclaim before the RTC of Mandaluyong City where Civil Case No. MC03-2202 is pending. Under Section 7, Rule 6 of the 1997 Rules of Civil Procedure, a counterclaim is compulsory when its object "arises out of or is necessarily connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." In *Quintanilla v. CA*[21] and reiterated in *Alday v. FGU Insurance Corporation*,[22] the "compelling test of compulsoriness" characterizes a counterclaim as compulsory if there should exist a "logical relationship" between the main claim and the counterclaim. There exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties. Clearly, the recovery of Premiere Development Bank's alleged deficiency claims is contingent upon the case filed by respondent corporations; thus, conducting separate trials thereon will result in a substantial duplication of the time and effort of the court and the parties.

The fear of Premiere Development Bank that they would have difficulty collecting its alleged loan deficiencies from respondent corporations since they were already involuntarily dissolved due to their failure to file reportorial requirements

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[20] See *Villanueva v. Tantuico, Jr.*, G.R. No. 53585, 15 February 1990, 182 SCRA 263, 267-268.

[21] 344 Phil. 811 (1997).

[22] 402 Phil. 962 (2001).

with the Securities and Exchange Commission is neither here nor there. In any event, the law specifically allows a trustee to manage the affairs of the corporation in liquidation, and the dissolution of the corporation would not serve as an effective bar to the enforcement of rights for or against it.

As early as 1939,[23] this Court held that, although the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences, there is no time limit within which the trustees must complete a liquidation placed in their hands. What is provided in Section 122[24] of the Corporation Code is that the conveyance to the trustees must be made within the three-year period. But it may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The trustees to whom the corporate assets

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[23] *Sumera v. Valencia*, 67 Phil. 721, 726 (1939).

[24] SEC. 122. *Corporate Liquidation*. †Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interests, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

have been conveyed pursuant to the authority of Section 122 may sue and be sued as such in all matters connected with the liquidation.

Furthermore, Section 145 of the Corporation Code clearly provides that "no right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation." Even if no trustee is appointed or designated during the three-year period of the liquidation of the corporation, the Court has held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication.[25] Therefore, no injustice would arise even if the Court does not stay the execution of G.R. 159352.

Although it is commendable for Premiere Development Bank in offering to deposit with the RTC the ₱800,000.00 as an alternative prayer, the Court cannot allow it to defeat or subvert the right of respondent corporations to have the final and executory decision in G.R. No. 159352 executed. The offer to deposit cannot suspend the execution of this Court's decision for this cannot be deemed as consignation. Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment, and it generally requires a prior tender of payment. In this case, it is Premiere Development Bank, the judgment debtor, who refused to pay respondent corporations ₱800,000.00 and not the other way around. Neither could such offer to make a deposit with the RTC provide a ground for this Court to issue an injunctive relief in this case.

WHEREFORE, the petition for review is *DENIED*. The decision of the Court of Appeals in CA-G.R. SP No. 92908 is *AFFIRMED*.

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[25] *Reburiano v. Court of Appeals*, 361 Phil. 294, 307 (1999) citing *Clemente v. Court of Appeals*, 242 SCRA 717 (1995).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175929. December 16, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMMEL DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL. — The emphasis, gesture and inflection of the voice are potent aids in understanding the testimony of witnesses. The trial court has the opportunity and is presumed to take advantage of these aids in weighing the testimony of the witnesses. But as they cannot be incorporated into the record, this Court has no assistance in the examination of the testimony and must, therefore, rely upon the good judgment of the trial court. Thus, in the absence of any showing that the trial court's calibration of credibility was flawed, We are bound by its assessment.

2. ID.; ID.; ID.; A CONCLUSION OF GUILT MAY BE REACHED ON THE BASIS OF THE TESTIMONY OF A SINGLE WITNESS WHERE SUCH TESTIMONY IS FOUND POSITIVE AND CREDIBLE BY THE TRIAL COURT. — No rule exists which requires a testimony to be corroborated to be adjudged credible. Witnesses are to be weighed, not numbered. Thus, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness despite the lack of corroboration, where such testimony is found positive and credible by the trial court. In such a case, the lone

testimony is sufficient to produce a conviction. Although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number. Conviction can still be had on the basis of the credible and positive testimony of a single witness.

3. ID.; ID.; ID.; WHEN CONDITIONS OF VISIBILITY ARE FAVORABLE, AND WHEN THE WITNESSES DO NOT APPEAR TO BE BIASED, THEIR ASSERTION AS TO THE IDENTITY OF THE MALEFACTOR SHOULD NORMALLY BE ACCEPTED. — It is settled that when conditions of visibility are favorable, and when the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted. Absent any evidence showing any reason and motive for the witness to prevaricate, the logical conclusion is that no such improper motive exists, and the testimony is worthy of full faith and credit.

4. ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME. — Alibi cannot prevail over the positive identification of the accused as the perpetrator of the crime.

5. ID.; ID.; ID.; WHEN TO PROSPER AS A DEFENSE. — [F]or the defense of alibi to prosper, appellant must establish that (a) he was in another place at the time of the commission of the offense; and (b) he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission.

6. CRIMINAL LAW; MURDER; ELEMENTS. — The elements of murder are: (1) That a person is killed; (2) That the accused killed him; (3) That the killing was attended by *any* of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) The killing is not parricide or infanticide.

7. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT. — There is treachery when a victim is set upon by the accused without warning; when the attack is sudden and unexpected and without the slightest provocation on the part of the victim; or is, in any event, so sudden and unexpected

that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant. In order to sustain a finding of treachery, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.

8. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM. – It is true that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. The Constitution uses the word "shall", hence, the same is mandatory. A violation of this right prevents the conviction of the accused with the crime charged in the Information. The constitutional guaranty has a *three-fold purpose*: *First.* To furnish the accused with such a description of the charge against him as will enable him to make his defense; and *second*, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and *third,* to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; QUALIFYING OR AGGRAVATING CIRCUMSTANCES, HOW ALLEGED. — The *en banc per curiam* Resolution of this Court in *People v. Aquino* provides for the proper way of making allegations of qualifying or aggravating circumstances in an Information as mandated by Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure: x x x the Court has repeatedly held even after the recent amendments to the Rules of Criminal Procedure, that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. x x x *The use of the words "aggravating/qualifying circumstances" will not add any essential element to the crime. Neither will the use of such words further apprise the accused of the nature of the charge. The specific allegation of the attendant circumstance in the Information, coupled with the designation of the offense and a statement of the acts constituting the offense as required*

in Sections 8 and 9 of Rule 110, is sufficient to warn the accused. x x x *The words "aggravating circumstances" include "qualifying circumstances". Qualifying circumstances are aggravating circumstances which, by express provision of law, change the nature of the crime to a higher category. The words "attendant circumstances", which still appear in Article 248 (raising homicide to murder), refer to qualifying circumstances — those aggravating circumstances that, by express provision of law, change the nature of the crime when present in the commission of the crime.* Section 9, Rule 110 of the Revised Rules of Criminal Procedure states that the — "x x x 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 x x x (the) qualifying and aggravating circumstances . x x x" *Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher category, need not be stated in the language of the law. With more reason, the words "aggravating/qualifying circumstances" as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.* Section 8 of Rule 110 requires that the Information shall "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifyingt and aggravating circumstances." Section 8 merely requires the Information to specify the circumstances. *Section 8 does not require the use of the words "qualifying" or "qualified by" 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.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

MURDER is one of the odious crimes a man can commit against another. It is no respecter of blood relations.

Accused-appellant Rommel dela Cruz seeks a reversal of his conviction by the Court of Appeals (CA)[1] and the Regional Trial Court (RTC)[2] for murder.

The Facts

Mario Pader, Manny Viscaya and Rafael Santarin are neighbors and friends.[3] Santarin and appellant Dela Cruz are first cousins.[4]

On August 7, 1995, at about 7:00 p.m., Santarin, Pader and Viscaya were conversing[5] near the *barangay* hall in Nadurata St., Caloocan City. Fronting the *barangay* hall is a street which was lighted by a fluorescent lamp.[6] Santarin was seated between Pader and Viscaya.[7] They were arms-length away of each other.[8]

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[1] *Rollo*, pp. 3-19. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring.

[2] *Id.* at 12-17. Penned by Judge Bayani S. Rivera.

[3] TSN, July 12, 2000, p. 4.

[4] *Id.* at 14.

[5] *Id.* at 3.

[6] *Id.* at 3-4.

[7] *Id.*

[8] *Id.*

Appellant was standing behind them,[9] at a distance of about two (2) meters.[10]

Viscaya went to buy some cigarettes from a nearby store beside the *barangay* hall[11] and returned to the place where Santarin and Pader were.[12]

Suddenly, appellant came from behind and stabbed Santarin[13] once.[14] Santarin fell to the ground, chin first.[15] Pader and Viscaya were instantly shocked and were unable to move.[16]

Appellant immediately fled the scene.[17] Subsequently, people from the *barangay* hall arrived and brought Santarin to the nearest hospital.[18] He, however, succumbed to death due to the stab wound.[19]

Dr. Bienvenido Muñoz, a Medico-Legal Officer of the National Bureau of Investigation (NBI),[20] conducted an autopsy on the victim's body. According to his findings,[21] Santarin sustained one stab wound in the back[22] which was 15 centimeters deep.[23]

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[9] *Id.*

[10] *Id.* at 4.

[11] *Id.* at 11.

[12] *Id.* at 6.

[13] *Id.* at 4.

[14] *Id.* at 7.

[15] *Id.* at 15.

[16] *Id.* at 8.

[17] *Id.* at 7.

[18] *Id.*

[19] *Id.* at 8.

[20] TSN, September 14, 2000, p. 4.

[21] Exhibit "H". Autopsy Report No. N-95-1543.

[22] TSN, September 14, 2000, p. 4; Exhibit "I".

[23] *Id.*

The wound reached the left lung[24] causing his death.[25] According to Dr. Muñoz, the weapon used by the assailant was a sharp, pointed single-bladed instrument which could either be a kitchen knife or a *balisong*.[26]

On December 13, 1995, appellant was indicted for murder in an Information that read:

I N F O R M A T I O N

The undersigned Assistant City Prosecutor accuses ROMMEL DELA CRUZ of the crime of 'MURDER,' committed as follows:

> That on or about the 7th day of August, 1995 in Kaloocan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and willfully, unlawfully and feloniously attack and stab with a bladed weapon on the back portion of the body one RAFAEL SANTARIN *y* DELA CRUZ, thereby inflicting upon the latter serious physical injuries which injuries caused his death upon arrival at the Ospital ng Kalookan, this city.
>
> Contrary to law.
>
> Kaloocan City, Metro Manila, December 6, 1995.
>
> (SGD.) AFABLE E. CAJIGAL
> Assistant City Prosecutor[27]

Appellant evaded arrest. The long arm of the law, however, caught up with him when he was arrested in Aliaga, Nueva Ecija.

When arraigned on June 7, 2000, appellant, assisted by Atty. Jimmy Edmund Batara, pleaded not guilty[28] to the Information. Trial on the merits ensued after.

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[24] *Id*.

[25] *Id.* at 5; Exhibit "A".

[26] *Id.* at 4.

[27] Records, p. 2.

[28] *Id.* at 20.

The prosecution evidence, which portrayed the foregoing facts, was supplied by the combined testimonies of Viscaya and Dr. Muñoz.

Appellant's version of the events is premised on denial and alibi.[29] He claimed that on the night of August 7, 1995, at about 7:00 p.m., he went to collect his fees for electrical services rendered from neighbors.[30] It was about that time when he passed by the group of Viscaya who were seated in front of the *barangay* hall at Libis Nadurata, Caloocan City.[31]

Appellant did not join the group but went on his separate way. He went to the houses of his "clients" to collect his fees until 8:00 p.m.[32] He did not go home to his parent's house later that evening because he was angry with them and his siblings.[33] He slept in a parked passenger jeep that was half a kilometer away from his parent's house.[34] He woke up at 3:00 a.m.[35] and took a passenger jeep bound for the pier.[36] He took a boat to Cebu City, arriving there the following day at about 6:00 a.m.[37] He stayed in Cebu City for four years.[38] His family in Cebu City was surprised to see him when he got there.[39]

Sometime in 1999, appellant returned, his family in tow, to his parent's house in Caloocan City. His mother, however, refused to accept them for her fear of trouble because of his alleged

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[29] TSN, December 7, 2000, pp. 3-13.

[30] *Id.* at 4.

[31] *Id.* at 4-5.

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

[33] *Id.* at 7.

[34] *Id.* at 6.

[35] *Id.*

[36] *Id.*

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

[38] *Id.* at 9.

[39] *Id.* at 8.

involvement in the killing of his first cousin.[40] As a result, he and his family proceeded to the house of his sister at P. Zamora Street, Caloocan City.[41] His mother later allowed his wife and children to stay in her house at Libis, but not him.[42]

Appellant proceeded to Tabang, Plaridel Bulacan[43] and stayed there for eight (8) months.[44] He told his relatives there that his mother was keeping him away as his life was in danger.[45] He also feared for his life because he was accused of killing his first cousin.[46] Appellant later transferred to Aliaga, Nueva Ecija where he was arrested on June 7, 1999.[47]

According to appellant, Viscaya had ill-motives in testifying falsely against him. They had a misunderstanding sometime in 1989 after appellant meddled in a quarrel between Viscaya and a friend. Since then, Viscaya resented him.

Appellant insisted that he is innocent. When asked why he was charged for the killing of his first cousin, his reply was "*hindi ko po alam sa kanila*."[48]

RTC and CA Dispositions

On February 26, 2001, the trial court rendered a judgment of conviction, disposing as follows:

WHEREFORE, premises considered, this Court finds the accused ROMMEL DELA CRUZ **guilty** beyond reasonable doubt as principal of **Murder**, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659.

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[40] *Id.* at 14.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.* at 15-16.

[46] *Id.*

[47] *Id.* at 10.

[48] *Id.* at 12. "I don't know to them."

Accordingly, he shall serve the penalty of ***Reclusion Perpetua*****,** with all the accessory penalties under the law and shall pay the costs.

Pursuant to Section 7, Rule 117 of the Revised Rules of Criminal Procedure, the accused shall be credited with the period of his preventive detention.

By way of death Indemnity, the accused shall pay the victim's heirs the amount of ₱50,000.00, without subsidiary imprisonment in case insolvency.

As funeral and related expenses, the accused shall also pay the victim's heirs the amount of ₱20,900.00 without subsidiary imprisonment in case of insolvency.

The Branch Clerk of this Court shall now issue the corresponding Commitment Order for the accused's confinement at the Bureau of Corrections, Muntinlupa City.[49]

By virtue of this Court's decision in *People v. Mateo*,50 the Court issued a resolution on September 6, 2004, transferring this case to the CA for appropriate action and disposition.

On July 28, 2006, the CA affirmed the trial court's disposition, with modification on the award of damages. The *fallo* of the CA decision reads:

UPON THE VIEW WE TAKE OF THESE CASES, THUS, the appealed Decision finding the accused-appellant Rommel Dela Cruz guilty beyond reasonable doubt of murder, and sentencing him to suffer the penalty of *reclusion perpetua,* is **AFFIRMED** with **MODIFICATION**. The civil aspect of the case of **MODIFIED** to read: the accused-appellant is hereby **ORDERED** to pay the heirs of the victim the amounts of ₱50,000.00 as civil indemnity, ₱20,900.00 as actual damages, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages. Costs shall also be assessed against the accused-appellant.

SO ORDERED.[51]

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[49] CA *rollo,* p. 17.

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

[51] *Rollo,* p. 19.

Undaunted, appellant took the present recourse.

Issues

In his final bid to seek reversal of his conviction, appellant imputes to the trial court the following errors, to wit:

I.

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE ACCOUNT OF THE PROSECUTION WITNESS ANENT THE SUBJECT INCIDENT.

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN REASONABLE DOUBT.

III.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS GUILTY, THE CRIME COMMITTED IS ONLY HOMICIDE.[52] (Underscoring supplied)

The first and second issues, being related, will be resolved jointly.

Our Ruling

I. The trial court did not err in convicting appellant. It did not also err in giving full faith and credence to the account of the prosecution witness. Positive identification prevails over denial and alibi. Flight is an indication of guilt.

In support of the first and second assigned errors, appellant claims that the testimony of Viscaya leaves much to be desired. According to him, there is a "gaping hole in Viscaya's testimony"[53] that seriously militates against his conviction. Although Viscaya testified about the presence of appellant at the scene of the

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[52] *Id.* at 38.

[53] *Id.* at 41.

crime, he, nonetheless, categorically admitted that he did not see the weapon used in stabbing the victim.[54]

The contention is untenable. The emphasis, gesture and inflection of the voice are potent aids in understanding the testimony of witnesses. The trial court has the opportunity and is presumed to take advantage of these aids in weighing the testimony of the witnesses. But as they cannot be incorporated into the record, this Court has no assistance in the examination of the testimony and must, therefore, rely upon the good judgment of the trial court.[55] Thus, in the absence of any showing that the trial court's calibration of credibility was flawed, We are bound by its assessment.[56]

More than that, a reading of the testimony of Viscaya would show that the trial court did not, in any way, err in calibrating the credibility of his testimony:

MANNY VISCAYA'S DIRECT EXAMINATION CONDUCTED BY PUBLIC PROSECUTOR FILOMENO BAJAR

x x x x x x x x x

Fiscal: On August 7, 1995 at around 7:00 o'clock in the evening, do you still remember your whereabouts?

Witness: I was there at the side of the *barangay* hall.

x x x x x x x x x

Q: Now, were you alone then or do you have companion with you on said place?
A: Mario Pader was with me and we were talking.

Q: **Who else were there, if you know?**
A: **We were 3 then, Rafael Santarin, Mario Pader and myself.**

x x x x x x x x x

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[54] *Id.* at 42.

[55] *People v. Pamor*, G.R. No. 108599, October 7, 1994, 237 SCRA 462.

[56] *People v. Taton*, G.R. Nos. 122757-61, November 28, 1997, 282 SCRA 300.

Q: **While the 3 of you were conversing on August 7, 1995 at around 7:00 p.m., do you remember if any unusual incident that transpired?**
A: **While we were conversing, I spotted Rommel dela Cruz on our back.**

Q: **How far was Rommel dela Cruz from you when you saw him?**
A: **He was about two (2) meters away from us.**

Q: What was he doing when you saw him for the first time in that distance for two (2) meters?
A: He was standing there, Sir.

Q: **After seeing him, what happened?**
A: When I saw him coming from our back, he immediately attacked.

Q: **Whom did he attack?**
A: **Rafael Santarin, Sir.**

x x x x x x x x x

Q: **So, when you said attack, what actually do you mean by that?**
A: **Rafael Santarin was stabbed, Sir.**

Q: **Before we go further, this Rommel dela Cruz who was your neighbor for 15 years, if he is in court, can you identify him?**
A: **Yes, Sir.**

Q: Please point to him?
A: That one, Sir.

Interpreter: **The witness pointed to a person inside the courtroom who identified himself as Rommel dela Cruz?**

Fiscal: **How were you able to see the stabbing of the victim in this case by Rommel dela Cruz when according to you, your back was against him?**

Witness: **Because after I spotted Rommel dela Cruz from our back, I bought cigarette and after buying cigarette, that was the time that he stabbed the victim.**

x x x x x x x x x

Q: **When you saw the stabbing of the victim by Rommel dela Cruz, what was then your position in relation to Rommel and Rafael?**
A: **My side was facing the two.**

Q: Were you still buying cigarette or, you have already bought cigarette when you saw them?
A: I already bought cigarette, Sir.

Q: **Will you please demonstrate to us how Rommel dela Cruz stabbed the victim?**

Interpreter: **The witness is demonstrating a forward thrust using his right hand.**

Fiscal: Were the two (2) protagonists facing each other?

Witness: No, Sir.

Q: **What was then the position of the victim in relation to the stabber?**
A: **The back of the victim was against the accused.**

Q: Did you see the weapon that was used by the accused in stabbing the victim?
A: I did not see it because the incident happened so fast.

Q: **How many times did he stab the victim?**
Witness: **Only one, Sir.**

x x x x x x x x x

Q: **When these people arrived and lifted the victim, where was then the accused?**
A: **The accused ran away, Sir.**

x x x x x x x x x

Fiscal: **What happened to the victim after he was stabbed by the accused?**
A: **He fell on the ground.**

x x x x x x x x x

Q: **Were you investigated by the police in relation to the incident that you saw?**
A: **Yes, Sir, at the District Office of the police.**

Q: **What did you tell the police?**
A: **I told them that I saw the incident.**

Q: **Before the stabbing of your friend by the accused, was there any conversation that transpired between the two?**
A: **None, Sir.**[57] (Emphasis ours)

No rule exists which requires a testimony to be corroborated to be adjudged credible.[58] Witnesses are to be weighed, not numbered.[59] Thus, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness despite the lack of corroboration, where such testimony is found positive and credible by the trial court. In such a case, the lone testimony is sufficient to produce a conviction.[60] Although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number.[61] Conviction can still be had on the basis of the credible and positive testimony of a single witness.[62]

That Viscaya did not see the weapon used does not impair his credibility. As he explained, he failed to see the weapon used to stab Santarin because the incident happened so fast.[63] There is neither jurisprudence nor rules of evidence that a witness'

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[57] TSN, July 12, 2000, pp. 3-8.

[58] *People v. Rayray*, G.R. No. 90628, February 1, 1995, 241 SCRA 1, 6, citing *People v. Villalobos*, G.R. No. 71526, May 27, 1992, 209 SCRA 304, 315; *People v. Canada*, G.R. No. 63728, September 15, 1986, 144 SCRA 121, 126.

[59] *Id.*, citing *People v. Jumao-as*, G.R. No. 101334, February 14, 1994, 230 SCRA 70, 77.

[60] *Id.*, citing *People v. Abo*, G.R. No. 107235, March 2, 1994, 230 SCRA 612, 619; *People v. Gonzales*, G.R. No. 105689, February 3, 1994, 230 SCRA 291, 296; *People v. Amaguin*, G.R. Nos. 54344-45, January 10, 1994, 229 SCRA 166, 174; *People v. Cariño*, G.R. Nos. 92144-49, December 18, 1992, 216 SCRA 702, 713.

[61] *Id.*, citing RULES OF COURT, Rule 133, Sec. 1; *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701, 706.

[62] *Id*.

[63] TSN, July 5, 2000, p. 6.

credibility is affected if there is failure to see the weapon used in the commission of the crime. To rule along the twisted logic of appellant could be absurd.

Viscaya was unrelenting in positively identifying appellant as the one who stabbed Santarin. Note that Viscaya and appellant were neighbors for about fifteen (15) years.[64] There could have been no mistake in Viscaya's identification of appellant as the assailant. It is settled that when conditions of visibility are favorable, and when the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted.[65] Absent any evidence showing any reason and motive for the witness to prevaricate, the logical conclusion is that no such improper motive exists, and the testimony is worthy of full faith and credit.[66]

Appellant has not presented any shred of evidence that Viscaya was impelled by an improper motive in identifying him as the assailant. When appellant was asked why he was charged with the killing of his first cousin, all he could say was "*hindi ko po alam sa kanila*."[67] Appellant's claim that Viscaya had an evil motive in testifying against him because they had a previous misunderstanding is too flimsy an excuse.

Appellant's denial and alibi are not worthy of belief. It is an oft-quoted doctrine that positive identification prevails over denial and alibi.[68] Alibi cannot prevail over the positive identification of the accused as the perpetrator of the crime.[69]

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[64] TSN, July 12, 2000, p. 5.

[65] *People v. Torrecampo,* 467 Phil. 918, 932 (2004), citing *People v. Ramirez,* G.R. No. 136094, April 20, 2001, 357 SCRA 222.

[66] *Id.*, citing *People v. Mallari,* G.R. No. 145993, June 17, 2003, 404 SCRA 170, citing *People v. Barnuevo,* G.R. No. 134928, September 28, 2001, 366 SCRA 243, and *People v. Fernandez,* G.R. No. 137647, February 1, 2001, 351 SCRA 80, 90.

[67] TSN, December 7, 2000, p. 12.

[68] *People v. Jackson,* G.R. No. 131842, June 10, 2003, 403 SCRA 500, citing *People v. Domingo,* G.R. No. 143660, June 5, 2002, 383 SCRA 43, 49.

[69] *People v. Mendoza,* 440 Phil. 755, 784 (2002), citing *People v. Taneo,* G.R. No. 117683, January 16, 1998, 284 SCRA 251; *People v. Dacibar,* G.R. No. 111286, February 17, 2000, 325 SCRA 725.

Furthermore, for the defense of alibi to prosper, appellant must establish that (a) he was in another place at the time of the commission of the offense; and (b) he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission.[70] Appellant does not dispute that he was near the scene of the crime on August 7, 1995. It was not also physically impossible for him to have been the author of the crime, and after, hide to avoid being prosecuted. In fact, during cross-examination, appellant explicitly admitted that the distance from where he slept and place of the stabbing incident was only for a short distance. Thus:

Q: You claimed in your Affidavit that you are (*sic*) only sleeping in the parked jeep near the school and your distance is not even 20 meters walk from where you were sleeping to the place of the stabbing incident?
A: Yes, Sir.

Q: Less than?
A: Yes, Sir, by mere walking, one would reach the place of the incident from the place where I used to sleep in front of the elementary school, Sir.[71]

Another circumstance which glaringly points to the guilt of appellant is his flight, not only from the scene of the crime, but also from the clutches of the authorities. Flight of an accused from the scene of the crime removes any remaining shred of doubt on his guilt.[72] Indeed, the wicked flee, when no man pursueth, but the innocent are bold as a lion.[73]

Consider the following:

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[70] *People v. Jackson, supra* note 68, citing *People v. Ferrer,* G.R. No. 139695, August 26, 2002, 388 SCRA 19.

[71] TSN, December 12, 2000, p. 15.

[72] *People v. Cahindo,* G.R. No. 121178, January 22, 1997, 266 SCRA 554, 559, citing *People v. Deunida,* G.R. Nos. 105199-200, March 28, 1994, 231 SCRA 520.

[73] *U.S. v. Alegado,* 25 Phil. 510 (1913).

First. On the night of the killing, appellant did not go home to his parent's house and instead slept inside a parked passenger jeep which was half a kilometer away from his parents' house. His reason was his alleged anger with his parents and siblings. He did not, however, explain what caused his anger for his parents and siblings which could have made his claim of not going home on that night believable.

Second. Appellant proceeded to the pier at 3:00 a.m. and took a boat for Cebu City where he admittedly stayed for 4 years.

Third. Although he and his family returned to Caloocan City in 1999, appellant opted not to stay in the city. He instead went to Tabang, Plaridel, Bulacan where he told his relatives that his mother was keeping him away as his life was in danger. He also told them that he feared for his life because he was accused of killing his first cousin.

Fourth. Continuing his flight, appellant finally sought sanctuary in the house of his relatives in Nueva Ecija where he was eventually caught.

Taken all together, these circumstances show that appellant entertained fear for what had happened to his first cousin. This could hardly be the conduct of an innocent man.

In his supplemental brief,[74] appellant also claims that the non-presentation of Pader as witness is "tantamount to suppression of evidence."[75]

If appellant felt that the prosecution was suppressing evidence, he should have asserted during trial his constitutional right "to have compulsory process to secure the attendance of witnesses and the production of evidence on his behalf."[76] This he did not do. Appellant cannot now be heard for the first time on appeal to complain that he could not secure the presence of

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[74] *Rollo,* pp. 25-26.

[75] *Id.* at 26.

[76] CONSTITUTION, Bill of Rights, Art. III, Sec. 14(2).

witnesses at the trial. It does not appear that he made any effort to do so before or during the progress of the trial, or that he sought the aid of the court to compel the attendance of his witnesses, or objected to proceeding without them.[77]

Also, there was no necessity for the prosecution panel to present Pader as witness for the simple reason that his testimony would have *merely been corroborative*. As earlier mentioned, the testimony of Viscaya is credible of belief, thus, any testimony of Pader *would have only been a superfluity*.

The elements of murder are: (1) That a person is killed; (2) That the accused killed him; (3) That the killing was attended by *any* of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) The killing is not parricide or infanticide.[78]

Appellant claims that "there was no concrete evidence proving that, indeed, treachery was employed in committing the crime charged."[79] According to him, "the prosecution failed to present evidence that accused-appellant has resolved to commit the crime prior to the moment of killing. There was no proof that the death of the deceased was the result of meditation, calculation or reflection."[80]

Appellant is mistaken. There is treachery when a victim is set upon by the accused without warning; when the attack is sudden and unexpected and without the slightest provocation on the part of the victim; or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the

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[77] *U.S. v. Garcia,* 10 Phil. 384 (1908).

[78] Reyes, L.B., The Revised Penal Code, Bk. II, 15th ed., rev. 2001, p. 463. "Although Art. 248 makes reference only to Art. 246, which defines and penalizes parricide, it is understood that the person killed *should not be less than three days old*; for, otherwise, the crime would be infanticide defined and penalized by Art. 255." *Id.*

[79] *Rollo,* p. 28.

[80] *Id.* at 29.

assailant.[81] In order to sustain a finding of treachery, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked not opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[82]

Appellant's attack on Santarin was so sudden and launched from behind that the latter was caught off guard. Appellant gave the victim no opportunity to defend himself, as the latter was innocently conversing with Viscaya and Pader. Appellant's attack was swift, deliberate and unexpected.[83] There was no slightest provocation on the part of Santarin. Treachery is, without question, present.

It is clear from the records that appellant had pondered upon the mode or method of his attack to insure the killing of Santarin or remove or diminish any risk to himself that might arise from the defense that Santarin might make. Appellant *suddenly stabbed Santarin at the back, even in the absence of provocation* by the victim, to insure himself against the risk from any possible defense that Santarin might make.

Dr. Muñoz, who conducted the autopsy on Santarin's corpse, also found out that Santarin sustained one stab wound at the back portion of his body, which caused his death. This corroborated the testimony of Viscaya that appellant stabbed the victim once at the back.

In one case, this Court ruled that treachery attended the killing of the victim "since the stabbing was sudden and unexpected, and the victim was not only unarmed, but was unable to defend himself."[84]

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[81] *People v. Carpio,* G.R. No. 110031, November 27, 1997, 282 SCRA 23, citing *People v. Villanueva,* G.R. No. 98468, August 17, 1993, 225 SCRA 353.

[82] *People v. Azugue,* G.R. No. 110098, February 26, 1997, 268 SCRA 711, 725.

[83] *Id*.

[84] *People v. Sanchez,* G.R. No. 118423, June 16, 1999, 308 SCRA 264, 286.

In another case[85] where treachery was also appreciated, it was shown that the victims were totally unprepared for the sudden and unexpected attack of appellant.

II. Appellant was correctly convicted of murder. There was no violation of the right of appellant to be informed of the nature and cause of accusation against him.

Appellant contends that "while it is not disputed that treachery was stated in the information, nonetheless, the same was not specified therein as a qualifying circumstance"[86] "in an ordinary and concise language sufficient to enable a person of common understanding to know what were those qualifying circumstances."[87] Thus, assuming he is guilty, he could only be convicted of homicide, not murder.

Appellant is building castle on sand. It is true that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him.[88] The Constitution uses the word "shall," hence, the same is mandatory. A violation of this right prevents the conviction of the accused with the crime charged in the Information.

The constitutional guaranty has a **three-fold purpose**: **First**. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and **second**, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and **third**, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a

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[85] *People v. De Vera, Sr.*, G.R. Nos. 121462-63, June 9, 1999, 308 SCRA 75, 96.

[86] *Rollo,* p. 42.

[87] *Id.* at 31.

[88] CONSTITUTION, Bill of Rights, Art. III, Sec. 14(2).

[89] *U.S. v. Karelsen*, 3 Phil. 223, 226 (1904), citing *United States v. Cruikshank,* 92 US 542.

conviction.[89]

The *en banc per curiam* Resolution of this Court in *People v. Aquino*[90] provides for the proper way of making allegations of qualifying or aggravating circumstances in an Information as mandated by Sections 8[91] and 9[92] of Rule 110 of the Revised Rules on Criminal Procedure:

> x x x the Court has repeatedly held even after the recent amendments to the Rules of Criminal Procedure, that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. x x x
>
> In the recent case of *People v. Lab-eo*, the appellant there questioned the decision of the lower court raising the killing to murder. The appellant there argued that he could only be convicted of homicide since the Information merely stated "that the aggravating circumstances of evident premeditation, treachery, abuse of superior strength and craft attended the commission of the offense." The appellant also asserted that since the circumstances were merely described as aggravating and not qualifying, he should only be convicted of the lesser crime of homicide. On this score, the Court ruled that —
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> > The fact that the circumstances were described as "aggravating" instead of "qualifying" does not take the Information out of the purview of Article 248 of the Revised

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[90] 435 Phil. 417, 422-427 (2002).

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

[92] *Id.*, 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.

> Penal Code. Article 248 does not use the word "qualifying" or "aggravating" in enumerating the circumstances that raise a killing to the category of murder. Article 248 merely refers to the enumerated circumstances as the "attendant circumstances."

x x x x x x x x x

The use of the words "aggravating/qualifying circumstances" will not add any essential element to the crime. Neither will the use of such words further apprise the accused of the nature of the charge. The specific allegation of the attendant circumstance in the Information, coupled with the designation of the offense and a statement of the acts constituting the offense as required in Sections 8 and 9 of Rule 110, is sufficient to warn the accused x x x.

x x x The words "aggravating circumstances" include "qualifying circumstances." Qualifying circumstances are aggravating circumstances which, by express provision of law, change the nature of the crime to a higher category. The words "attendant circumstances," which still appear in Article 248 (raising homicide to murder), refer to qualifying circumstances – those aggravating circumstances that, by express provision of law, change the nature of the crime when present in the commission of the crime.

Section 9, Rule 110 of the Revised Rules of Criminal Procedure states that the —

> "x x x 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 x x x (the) qualifying and aggravating circumstances x x x."

Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher category, need not be stated in the language of the law. With more reason, the words "aggravating/qualifying circumstances" as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific

allegation of the circumstances mentioned in the law that raise the crime to a higher category.

Section 8 of Rule 110 requires that the 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." Section 8 merely requires the Information to specify the circumstances. Section 8 does not require the use of the words "qualifying" or "qualified by" 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.

x x x x x x x x x

We therefore reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these 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 the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.

x x x x x x x x x

To guide the bench and the bar, this Resolution clarifies and resolves the issue of how to allege or specify qualifying or aggravating circumstances in the Information. The words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated as long as the particular attendant circumstances are specified in the Information. (Emphasis ours)

The Information in this case clearly forewarns appellant that "without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill," he "did then and willfully, unlawfully and feloniously attack and stab, with a bladed weapon, on the back portion of the body," Santarin, "thereby inflicting upon the latter serious physical injury

which injury caused his death."[93] These allegations, once they were proven beyond reasonable doubt by the prosecution, qualify the killing of Santarin to murder.

WHEREFORE, the petition is *DENIED* and the appealed Court of Appeals Decision *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176141. December 16, 2008]

GERTRUDES NABUA, ALEX N. LU, CAYETANO N. LU, JR. and JULIETA N. LU, *petitioners, vs.* **DOUGLAS LU YM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS OR ORDERS; INTERLOCUTORY ORDER; NOT APPEALABLE UNTIL THE RENDITION OF THE JUDGMENT ON THE MERITS. — As a general rule, an interlocutory order is not appealable until after the rendition of the judgment on the merits; otherwise, the administration of justice will be delayed and it will result to undue burden upon the courts.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; APPROPRIATE REMEDY TO ASSAIL AN INTERLOCUTORY ORDER; REQUISITES. — This Court x x x has held that an original action for *certiorari* under

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[93] Records, p. 2.

Rule 65 is an appropriate remedy to assail an interlocutory order when (1) the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion, and (2) the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.

3. ID.; ID.; APPEALS; AN APPEAL FROM AN ORDER DENYING A MOTION FOR RECONSIDERATION OF AN ORDER OF DISMISSAL OF A COMPLAINT IS EFFECTIVELY AN APPEAL OF THE ORDER OF DISMISSAL ITSELF; RATIONALE. — *An appeal from an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.* The rationale behind this principle is that the denial of such a motion for reconsideration is not an interlocutory order, because it puts an end to a particular matter, and nothing is left for the trial court but to execute the order. Hence, it does not violate the rule that an appeal may be taken only from a judgment or final order. The December 20, 2007 amendment to the Rules of Civil Procedure has, in fact, deleted Section 1 (a) of Rule 41 which contains the express provision that no appeal may be taken from an order denying a motion for new trial or reconsideration.

4. ID.; ID.; ID.; AN APPEAL FROM AN ORDER OF DENIAL OF A MOTION FOR RECONSIDERATION SHOULD ALSO BE DEEMED TO REFER TO THE DECISION OF THE TRIAL COURT. — As *Apuyan v. Haldeman* directs, an appeal from an order of a denial of a motion for reconsideration should also be deemed to refer to the decision of the trial court. Notwithstanding the terminology of the notice of appeal, the material consideration is if the appeal was filed within the required period of 15 days from receipt of the main decision. As this Court ruled in Apuyan: *"In this case, petitioner filed his appeal within the reglementary period.* However, he did not appeal from the trial court's decision dated October 9, 1996 which disposed the case, but from the trial court's Order dated January 7, 1997, denying his motion for reconsideration of the decision of the trial court. Can we consider said appeal from the Order denying a motion for reconsideration of the judgment of the trial court as an appeal from a final order? We rule in the affirmative. x x x Similarly, in the instant case,

the trial court's Order dated January 7, 1997 denying petitioner's motion for reconsideration of the trial court's decision dated October 9, 1996 is not an interlocutory order, but a final order, as the trial court finally resolved therein the issues raised in the motion for reconsideration, which were already passed upon in the trial court's decision. *Petitioner's reference in his notice of appeal to the Order of the trial court dated January 7, 1997 denying petitioner's motion for reconsideration should also be deemed to refer to the decision of the trial court dated October 9, 1996, which was the subject of the motion for reconsideration.* In effect, petitioner appealed from the final order of the trial court dated January 7, 1997 and the decision of the trial court dated October 9, 1996, which appeal was filed on time." The 15-day period to file an appeal is reckoned from the date of receipt of the decision, and this period is interrupted by the timely filing of a motion for new trial or reconsideration.

5. ID.; ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; IN A *CERTIORARI* PROCEEDING INVOLVING AN INCIDENT IN A CASE, THE COURT DOES NOT HAVE AUTHORITY TO RULE ON THE MERITS OF THE MAIN CASE ITSELF WHICH IS NOT ON APPEAL BEFORE IT. — *In a certiorari proceeding involving an incident in a case, the court does not have authority to rule on the merits of the main case itself which is not on appeal before it.*

6. ID.; ID.; EFFECT OF FAILURE TO PLEAD; ORDER OF DEFAULT; EFFECT. — In the recent case of *Martinez v. Republic*, this Court stressed that a party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default on the ground, *inter alia*, that the amount of the judgment is excessive or is different in kind from that prayed for, or that plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. He may not seek the reversal of the decision on the basis of evidence submitted in the appellate court. Otherwise, his right to adduce evidence would have been returned to him. We expect therefore, that the CA disposition of his pending appeal will almost certainly be based on evidence presented by petitioners *ex parte*.

APPEARANCES OF COUNSEL

M.B. Hahinay & Associates for petitioners.
Calderon Davide Trinidad Tolentino & Castillo Law Offices for respondent.

D E C I S I O N

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

LITIGANTS should not trifle with decisions of the highest court of the land, the final arbiter of legal controversies.

This is a petition for review on *certiorari* of the resolution[1] of the Court of Appeals (CA) denying petitioners' motion to dismiss appeal and motion to order the trial court to issue a writ of execution.

The Antecedents

Sometime in the 1940s, Cayetano Ludo took petitioner Gertrudes Nabua as his common law wife and had ten children with her, namely: George, Alex, Cayetano, Jr., Julieta, Crispin alias "Douglas," Evangeline, Marilyn, Bernardita, Edwin, and Cresencio, all surnamed Lu. Alex, Cayetano, Jr., and Julieta join Gertrudes as petitioners against respondent Douglas in this case.

Cayetano, together with his brothers Paterno and Cipriano, founded the now famous Ludo and Lu Ym Corporation which owns the biggest single crushing plant in the world. Aside from commercial endeavors in the Philippines and abroad, Cayetano acquired numerous real and personal properties, e.g., beach resorts, condominium units, agricultural and commercial lots, private jet, sports cars, and shares of stocks.

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[1] *Rollo*, pp. 33-34. Dated January 4, 2007. Court of Appeals, Cebu City, Special 18th Division; Associate Justice Arsenio Magpale (chairman), with Associate Justices Isaias Dicdican and Marlene Gonzales-Sison (members).

In the 1970s, respondent Douglas, also known as Crispin N. Lu, took active part in the management of all the properties owned by Cayetano. In the late '70s and early '80s when Cayetano was already old and sickly, his shares of stocks were transferred to respondent. When Cayetano's death was impending, respondent explained to his brothers and sisters the need to execute a simulated last will and testament to evade payment of excessive inheritance taxes.

Indeed, a simulated last will and testament was supposedly executed by Cayetano under respondent's supervision and guidance. At that time, Cayetano was already dependent on respondent's decision-making. After Cayetano's death, respondent informed petitioners of the need to have the simulated last will and testament of their father probated. Petitioners (plaintiffs) all signed without any opposition because they were made to believe that it was for the purpose of keeping the properties of their father intact for the benefit of the family.

Respondent managed the 50% share of petitioner Gertrudes Nabua in the estate of Cayetano. Likewise, respondent managed and held in trust the other 50% of the properties of Cayetano due his children. This included the properties of the unwilling co-plaintiffs, namely: Evangeline, Marilyn, Bernardita, Edwin, and Cresencia. In the course of administering and managing the properties entrusted to him, respondent abandoned his own mother, petitioner Gertrudes Nabua, and stopped giving support to her.

Petitioners demanded an accounting from respondent when they learned that their cousins, children of Paterno Lu Ym, were given a similar accounting of the sale of shares of stocks in Philippine Bank of Communications and Crown Oil Corporation. Their demand was, however, ignored by respondent.

RTC Proceedings

Respondent's motion to dismiss was denied by the Regional Trial Court (RTC). On appeal, this Court remanded the motion to the RTC for further proceedings. Meanwhile, respondent was declared in default by the RTC for failure to file his answer.

Because of respondent's refusal to render an accounting, petitioners, as plaintiffs, were constrained to file a complaint for accounting with prayer for temporary restraining order and injunction with the RTC, Branch 24, in Cebu City.

On August 16, 2002, respondent, as defendant, filed an omnibus motion to dismiss the complaint on the following grounds: (a) plaintiffs' claims are barred by a prior judgment or by the statute of limitations; (b) plaintiffs have no legal capacity to sue and/or do not have a cause of action; (c) fraud and equity; and (d) docket fees were not paid, therefore, a condition precedent for filing the claim has not been complied with.[2]

Respondent's omnibus motion was denied by the RTC. His motion for reconsideration was rejected. Repairing to the CA, the appellate court on August 20, 2003 denied respondent's petition to reverse the order of the RTC denying his motion to dismiss.[3]

Undaunted, respondent went up to this Court in G.R. No. 161309 entitled *Lu Ym v. Nabua*,[4] seeking a review of the CA decision and resolution.[5] On February 23, 2005, this Court partly granted respondent's petition and ordered a remand to the RTC for further proceedings to resolve anew with deliberate dispatch the motion to dismiss, disposing thus:

> WHEREFORE, the petition is GRANTED in part. The Decision of the Court of Appeals dated August 20, 2003 sustaining the trial court's denial of petitioner's motion to dismiss, as well as its resolution dated December 16, 2003 denying reconsideration, is REVERSED and SET ASIDE. *The case is REMANDED to the Regional Trial Court of Cebu City for further proceedings to resolve anew with deliberate dispatch the motion to dismiss* in accordance with

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[2] *Id.* at 50-56.

[3] *Id.* at 57-64. CA-G.R. SP No. 74095. Dated August 20, 2003. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Jose C. Mendoza, concurring.

[4] G.R. No. 161309, February 23, 2005, 452 SCRA 298.

[5] *Lu Ym v. Nabua, id.*

Section 3, Rule 16 of the 1997 Rules of Civil Procedure as elucidated in this Decision.[6] (Emphasis supplied)

Meanwhile, respondent was declared in default by the RTC on May 28, 2003 for failure to file his answer. As a result, plaintiffs were allowed to present evidence *ex parte*.[7]

At the time petitioner Gertrudes testified during trial, she was already 86 years old. She related how she felt abandoned and betrayed by her son Douglas. She felt neglected when he cut off her monthly allowance of ₱10,000. Douglas lived in a property worth several millions of pesos while she lived in a modest house. She filed the complaint to compel him to render an accounting of all properties which she and her husband acquired jointly during their union.[8]

RTC Disposition

On March 16, 2005, the RTC rendered a Decision[9] ordering respondent to account for the properties subject of the complaint. The *fallo* of the decision stated:

WHEREFORE, in view of the foregoing, *this Court finds for plaintiffs and hereby enters judgment ordering defendant Douglas Lu Ym to account the following real properties owned by the late Cayetano Ludo and held by him in trust and for the benefit of herein plaintiffs*, on the following properties, as follows: Tax Declaration No. 01616 under defendant's name covering Lot No. 1 (Exh. "H"); Tax Declaration No. 02207 under defendant's name covering Lot No. 3 (Exh. "I"); Tax Dec. No. 02143 under the name of Lu Ym Annabel (wife of defendant Douglas Lu Ym) (Exh. "J"); Tax Dec. No. 00024 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "K"); Tax Dec. No. 02827 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "L"); Tax Dec. No. 02826 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "M"); Tax Dec. No. 03157 under the name of Annabelle Lu Ym (defendant's wife)

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[6] *Id.* at 311.

[7] *Rollo,* p. 86.

[8] *Id.* at 87.

[9] *Id.* at 84-99.

(Exh. "N"); Transfer Certificate of Title No. 102557 under the name of defendant Douglas Lu Ym (Exh. "0-1"); Tax Dec. No. 02143 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "P"); Tax Dec. No. 0028 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "S"); Tax Dec. No. 01615 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "U"); Tax Dec. No. 01617 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "W"); Tax Dec. No. 02208 under the name of defendant Douglas covering Lot No. 3 (Exh. "Y"); the 1/3 share of the late Cayetano Ludo with the Ludo & Lu Ym Development Corporation, among which are the following: Transfer Certificate of Title Nos. 17029 (Exh. "AA"), 17032 (Exh. "BB"), 22325 (Exh. "CC"), 22323 (Exh. "DD"), 44057 (Exh. "EE"), 20514 (Exh. "FF"), 20515 (Exh. "GG"), and 20516 (Exh. "HH"), all registered under the Ludo and Lu Ym Development Corporation of which defendant Douglas is one of the major stockholders as shown in the Certification issued by the Corporate Secretary (Exh. "II") of the said corporation; the proceeds of the sale of the following properties of the late Cayetano Ludo sold by defendant as follows: (a) of the private jet plane amounting to ₱100 million pesos; shares of stocks with Crown Oil Corporation Communications amounting to ₱30 million dollars; shares of stocks with Philippine Bank of Communications amounting to ₱53 million pesos; luxurious cars amounting ₱50 million pesos; rent of ancestral house (the White House) located at F. Ramos St. beside Robinson's Department Store, Cebu City; and proceeds of the sale of the Ranudo property; *and all other properties which defendant held and continue to hold in trust for all the heirs of the late Cayetano Ludo*.

The Bureau of Internal Revenue is specifically directed to compute and impose the estate taxes due on the above mentioned properties of the late Don Cayetano Ludo.

SO ORDERED.[10] (Emphasis supplied)

On April 12, 2005, respondent moved for reconsideration.[11] He contended that the February 23, 2005 ruling of the Supreme Court in G.R. No. 161309[12] invalidated or rendered moot the RTC decision.

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[10] *Id.* at 98-99.

[11] *Id.* at 100-101.

[12] *Lu Ym v. Nabua, supra* note 4.

In its Order of May 20, 2005,[13] the RTC denied respondent's motion for reconsideration. The RTC laid down its bases for denying the motion as follows:

The prayer to set aside herein judgment cannot be sustained for lack of legal basis. The record will show that proceedings in this case was conducted regularly:

1. Per Motion, defendant Douglas was given until June 15, 2002 to submit responsive pleading (May 30, 2002 order) on August 2, 2002, defendant Douglas was given 15 days to file answer to the amended complaint;
2. Another extension of 15 days or until November 8, 2002 was given as prayed for (October 28, 2002 order);
3. Another extension was requested on November 7, 2002 which was granted in the order dated November 12, 2002;
4. Due to the filing of the Petition for *Certiorari*, this Court on its own, suspended further proceedings for sixty (60) days (November 29, 2002 order);
5. On February 7, 2003, plaintiffs prayed that principal defendant be declared in default;
6. On February 10, 2003, said defendant was again reminded to submit answer;
7. Defendant Douglas was declared in default (May 25, 2003 order);
8. Plaintiff Gertrudes Nabua testified on June 27, 2003;
9. Temporary Restraining Order issued by the Court of Appeals was received on September 4, 2003;
10. On August 20, 2003, the Court of Appeals dismissed the *Certiorari* petition and affirmed the two assailed orders (received on September 11, 2003);
11. Defendant Douglas appealed the Court of Appeals decision to the Supreme Court by way of Petition for Review on *Certiorari*.

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[13] *Rollo*, pp. 102-103.

Meanwhile, as there was no restraining order from the Supreme Court, plaintiffs continued to present evidence. Exhibit was formally offered on March 31, 2004 which was admitted in evidence in an Order dated April 30, 2004. Until this Court entered judgment in the main case.

In the light also of a recent Supreme Court Circular, wherein defendant in a civil case is directed to observe restraint in filing a Motion to Dismiss and instead allege the grounds thereof as defenses in the answer, this Court was confident that its ruling in the Motion to dismiss which was upheld by the Court of Appeals is in accord with the said rule. It has already reached a point of no return. Had the Honorable Supreme Court dismissed the main case, which is one of the reliefs in a Petition for *Certiorari*, it would have been different.[14]

CA Proceedings

On May 25, 2005, respondent filed a notice of appeal[15] from the RTC order denying his motion for reconsideration. On May 26, 2005, the RTC gave due course to the notice of appeal.[16]

Petitioners filed a motion for reconsideration of the order giving due course to the notice of appeal with motion for entry of judgment and writ of execution,[17] emphasizing that the notice of appeal of respondent is not an appeal from the decision in Civil Case No. CEB 27717 dated March 16, 2005 but from the Order dated May 20, 2005.

The RTC resolved the motion for reconsideration of petitioners in the following manner:

Due to the fact that this Court recognizes the right of appeal, it failed to realize that what was the subject of the notice of appeal is the Order of this Court dated May 20, 2005 order denying the Motion for Reconsideration and not the decision rendered on March 16, 2005.

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[14] *Id.* at 102-103.

[15] *Id.* at 104.

[16] *Id.* at 106. Order dated May 26, 2005.

[17] *Id.* at 107-109. Dated June 6, 2005.

At any rate, transmit the records of this case to the Court of Appeals as directed in the May 26, 2005 Order and leave it to the higher court to determine whether or not the appeal was filed out of time.[18]

Supreme Court Proceedings

While his appeal was pending before the CA, respondent filed a petition for contempt of court before this Court against the counsel of petitioners and the RTC presiding judge, entitled *Lu Ym v. Mahinay,* docketed as G.R. No. 164476.[19] Respondent contended that Atty. Mahinay and Judge Sarmiento defied this Court's decision in G.R. No. 161309[20] by refusing to vacate the RTC decision rendered.

On June 16, 2006, this Court dismissed respondent's petition, ruling that the assailed acts of counsel and RTC judge do not constitute disobedience to or defiance of the decision in G.R. No. 161309.[21] The pertinent portion of the decision states:

In the present case, the assailed acts of respondents do not constitute disobedience to, or defiance of the decision in G.R. No. 161309. *The Court never stated therein that the March 16, 2005 decision of respondent Judge, or any judgment on the merits rendered pending decision of the Court, should be set aside.* Note that no TRO or injunction was issued to restrain the proceedings below. Unrestrained, the trial, presentation of evidence and rendition of judgment would logically take their course, and respondent Judge could not be faulted for proceeding with the rendition of judgment.

Moreover, the main thrust of the Court's decision in G.R. No. 161309 was to order the trial court to rule on the issues raised by petitioner in the motion to dismiss. This had already been substantially satisfied by the respondent Judge in his March 16, 2005 decision. In holding that the probated will of Cayetano did not, in fact, settle his estate as the same was simulated and intended merely to evade payment of taxes, respondent Judge in effect

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[18] *Id.* at 111.

[19] G.R. No. 169476, June 16, 2006, 491 SCRA 253.

[20] *Lu Ym v. Nabua, supra* note 4.

[21] *Lu Ym v. Mahinay, supra.*

debunked the claim of valid assignment of rights over the properties in favor of petitioner and the Lu Ym Corporation as well as petitioner's assertion that the probate of Cayetano's will constituted *res judicata* and a bar to the relitigation of the same properties. So also, the pronouncement of respondent Judge that Gertrudes is the common law wife of Cayetano is recognition of Gertrudes' capacity to sue. In the same vein, the full faith and credence accorded by respondent Judge on the allegations and testimonies of Gertrudes and her witnesses addressed the issue of fraud invoked by petitioner.[22] (Emphasis supplied)

CA Disposition

Back in the CA, petitioners filed a motion to order the trial court to issue a writ of execution.[23] They reiterated their position that the Supreme Court ruling in G.R. No. 161309[24] did not nullify the RTC decision.

On January 4, 2007, the CA denied the two motions of petitioners, namely: (a) Motion to Dismiss Appeal; and (b) Motion to Order the Trial Court to Issue a Writ of Execution. The CA resolution stated:

> In *Apuyan vs. Haldeman*, 438 SCRA 402, September 20, 2004, the Court held:
>
> > Petitioners' reference in his notice of appeal to the Order of the Trial Court dated 07 January 1997 denying petitioner's Motion for Reconsideration should also be deemed to refer to the decision of the trial court dated 09 October 1996 which was subject of the Motion for Reconsideration. (pls. see pages 99-103)
>
> Note: Plaintiff-Appellees moved to dismiss defendant-appellants Appeal on the ground that what the appellant appealed from was the Order denying the Motion for Reconsideration of the Decision and not the Decision of the RTC. x x x[25]

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[22] *Id.* at 262-263.

[23] *Rollo,* pp. 132-145.

[24] *Lu Ym v. Nabua, supra* note 4.

[25] *Rollo,* p. 33.

Petitioners thus resorted to the present recourse under Rule 45.

Issue

Petitioners hoist the lone issue that THE COURT OF APPEALS GRAVELY ERRED IN ALLOWING RESPONDENT TO APPEAL BEFORE IT ON AN ISSUE WHICH HAS ALREADY BEEN RESOLVED WITH FINALITY BY THE SUPREME COURT IN G.R. NO. 169476 (*LU YM V. MAHINAY*).[26]

Our Ruling

Prefatorily, the present petition under Rule 45 is an appeal from a CA resolution denying the motion to dismiss. Such denial is an interlocutory order which is not a proper subject for a Rule 45 petition.

As a general rule, an interlocutory order is not appealable until after the rendition of the judgment on the merits; otherwise, the administration of justice will be delayed and it will result to undue burden upon the courts.

This Court, however, has held that an original action for *certiorari* under Rule 65 is an appropriate remedy to assail an interlocutory order when (1) the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion, and (2) the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.[27]

In the interest of substantial justice, We treat this petition as an original action for *certiorari* under Rule 65. Verily, We are asked to resolve whether the CA gravely erred or abused its discretion in allowing respondent's appeal from an order of dismissal of his motion for reconsideration.

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[26] *Id.* at 14.

[27] *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue,* G.R. No. 158261, December 18, 2006, 511 SCRA 123, 137.

An appeal from an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.[28]

The rationale behind this principle is that the denial of such a motion for reconsideration is not an interlocutory order, because it puts an end to a particular matter, and nothing is left for the trial court but to execute the order.[29] Hence, it does not violate the rule that an appeal may be taken only from a judgment or final order.[30] The December 20, 2007 amendment to the Rules of Civil Procedure has, in fact, deleted Section 1(a) of Rule 41 which contains the express provision that no appeal may be taken from an order denying a motion for new trial or reconsideration.[31]

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[28] *Quelnan v. VHF Philippines, Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631.

[29] *Id*.

[30] Rules of Civil Procedure (1997), Rule 41, Sec. 1.

[31] The present amended Section 1, Rule 41 of the Rules of Procedure states:

> Section 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (b) An interlocutory order;
>
> (c) An order disallowing or dismissing an appeal;
>
> (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (e) An order of execution;
>
> (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (g) An order dismissing an action without prejudice.
>
> In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

Petitioners moved to dismiss respondent's appeal before the CA, based on the theory that the notice of appeal stated that it was an appeal from the order denying the motion for reconsideration. As *Apuyan v. Haldeman*[32] directs, an appeal from an order of a denial of a motion for reconsideration should also be deemed to refer to the decision of the trial court.

Notwithstanding the terminology of the notice of appeal, the material consideration is if the appeal was filed within the required period of 15 days from receipt of the main decision. As this Court ruled in *Apuyan*:

In this case, petitioner filed his appeal within the reglementary period. However, he did not appeal from the trial court's decision dated October 9, 1996 which disposed the case, but from the trial court's Order dated January 7, 1997, denying his motion for reconsideration of the decision of the trial court.

Can we consider said appeal from the Order denying a motion for reconsideration of the judgment of the trial court as an appeal from a final order?

We rule in the affirmative.

x x x x x x x x x

Similarly, in the instant case, the trial court's Order dated January 7, 1997 denying petitioner's motion for reconsideration of the trial court's decision dated October 9, 1996 is not an interlocutory order, but a final order, as the trial court finally resolved therein the issues raised in the motion for reconsideration, which were already passed upon in the trial court's decision.

Petitioner's reference in his notice of appeal to the Order of the trial court dated January 7, 1997 denying petitioner's motion for reconsideration should also be deemed to refer to the decision of the trial court dated October 9, 1996, which was the subject of the motion for reconsideration.

In effect, petitioner appealed from the final order of the trial court dated January 7, 1997 and the decision of the trial court dated

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[32] G.R. No. 129980, September 20, 2004, 438 SCRA 402.

October 9, 1996, *which appeal was filed on time*.[33] (Emphasis supplied)

The 15-day period to file an appeal is reckoned from the date of receipt of the decision, and this period is interrupted by the timely filing of a motion for new trial or reconsideration.[34] Records of the instant controversy show that respondent received a copy of the March 16, 2005 Decision of the RTC on April 4, 2005. On the eighth day, April 12, 2005, respondent filed his motion for reconsideration. This translates to a balance of seven days from the original 15-day period to appeal the decision. On May 24, 2005, respondent received the Order dated May 20, 2005 denying his motion for reconsideration. On the fifth day, May 25, 2005, respondent filed his notice of appeal.[35] In sum, respondent used up a total of 13 days to file his appeal, well within the 15 days required to do so.

We now tackle the issue of whether the issue subject of the appeal of respondent before the CA has already been resolved by the Supreme Court in *Lu Ym v. Mahinay*.[36]

We are constrained to rule in the negative. To rule otherwise would require Us to delve into the merits of the case. **In a *certiorari* proceeding involving an incident in a case, the court does not have authority to rule on the merits of the main case itself which is not on appeal before it**.[37]

Records show that upon receiving summons to answer the complaint against him by petitioners in the RTC, respondent filed a motion to dismiss. When his motion was denied, he did not file his answer despite direction to do so, resulting in the declaration of default against him. Respondent appealed the denial of his motion to dismiss with the CA. The CA, however,

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[33] *Apuyan v. Haldeman, id.* at 417-419.

[34] Rules of Civil Procedure, Rule 41, Sec. 3.

[35] *Rollo,* p. 104.

[36] *Supra* note 19.

[37] *Municipality of Biñan, Laguna v. Court of Appeals,* G.R. No. 94733, February 17, 1993, 219 SCRA 69.

affirmed the RTC ruling. On appeal to this Court, the case was remanded to the trial court for further proceedings.

The trial court rendered its decision before it was notified of this Court's decision in G.R. No. 161309.[38] Respondent appealed the decision, which appeal is now pending before the CA. At the same time, he filed G.R. No. 169476[39] before this Court, seeking a declaration of indirect contempt against the RTC judge and petitioners' counsel, for allegedly disobeying the remand order in G.R. No. 161309.[40]

Petitioner's reliance on the Court's pronouncement in the contempt proceeding[41] is misplaced. G.R. No. 16947642 resolved that petitioner's counsel and the RTC presiding judge were not guilty of indirect contempt for disobeying the decision in G.R. No. 161309.[43] The case did not rule on the validity of the RTC decision but instead noted that an appeal was pending before the CA where the issue should be properly addressed. Speaking through Justice Consuelo Ynares-Santiago, this Court expressly stated:

The sole issue here is whether respondents are guilty of indirect contempt.

We rule in the negative.

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In the present case, the assailed acts of respondents do not constitute disobedience to, or defiance of the decision in G.R. No. 161309. The Court never stated therein that the March 16, 2005 decision of respondent Judge, or any judgment on the merits rendered pending decision of the Court, should be set aside. Note that no TRO or injunction was issued to restrain the proceedings below.

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[38] *Lu Ym v. Nabua, supra* note 4.

[39] *Lu Ym v. Mahinay, supra* note 19.

[40] *Lu Ym v. Nabua, supra* note 4.

[41] *Lu Ym v. Mahinay, supra* note 19.

[42] *Id*.

[43] *Lu Ym v. Nabua, supra* note 4.

Unrestrained, the trial, presentation of evidence and rendition of judgment would logically take their course, and respondent Judge could not be faulted for proceeding with the rendition of judgment.

Moreover, the main thrust of the Court's decision in G.R. No. 161309 was to order the trial court to rule on the issues raised by petitioner in the motion to dismiss. This had already been substantially satisfied by the respondent Judge in his March 16, 2005 decision. In holding that the probated will of Cayetano did not, in fact, settle his estate as the same was simulated and intended merely to evade payment of taxes, respondent Judge in effect debunked the claim of valid assignment of rights over the properties in favor of petitioner and the Lu Ym Corporation as well as petitioner's assertion that the probate of Cayetano's will constituted *res judicata* and a bar to the relitigation of the same properties. So also, the pronouncement of respondent Judge that Gertrudes is the common law wife of Cayetano is recognition of Gertrudes' capacity to sue. In the same vein, the full faith and credence accorded by respondent Judge on the allegations and testimonies of Gertrudes and her witnesses addressed the issue of fraud invoked by petitioner.

It is therefore clear that to nullify the March 16, 2005 decision of respondent Judge and to conduct anew the proceedings before the trial court for the sole purpose of ruling on the motion to dismiss, would be a waste of time which would further delay the resolution of this case. **Furthermore, the assailed March 16, 2005 decision of the trial court is now on appeal before the Court of Appeals. It is therefore before the latter court where the issue of the nullification of the trial court's decision should be addressed**.

In sum, we find that respondents did not commit any act amounting to indirect contempt. To reiterate, respondent Judge's March 16, 2005 Decision and May 20, 2005 Order do not constitute defiance of the Court's verdict in G.R. No. 161309. It follows therefore that the pleadings filed by respondent Atty. Mahinay in reliance of the aforesaid decision and order of the trial court are not as well contumacious. Indeed, an act to be considered contemptuous must be clearly contrary or prohibited by the order of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[44]

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[44] *Lu Ym v. Mahinay, id.* at 262-264.

When respondent was declared in default, the proper remedy would have been to file a motion to set aside the order of default upon a proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense.[45] This respondent failed to do.

In the recent case of *Martinez v. Republic*,[46] this Court stressed that a party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default on the ground, *inter alia*, that the amount of the judgment is excessive or is different in kind from that prayed for, or that plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. He may not seek the reversal of the decision on the basis of evidence submitted in the appellate court. Otherwise, his right to adduce evidence would have been returned to him.[47] We expect therefore, that the CA disposition of his pending appeal will almost certainly be based on evidence presented by petitioners *ex parte*.

We note the length of time this action has been pending with the courts, and the number of times the parties have appealed to the CA and to this Court, resulting in delay in the execution of the trial court decision. We likewise note that petitioner Gertrudes Nabua is already in advanced years and suffers from failing health.[48] She may not enjoy her entitlement to her share in the contested properties should this case be further delayed.

WHEREFORE, the petition is *DENIED* but the Court of Appeals is **ORDERED** to resolve respondent's appeal with deliberate dispatch.

SO ORDERED.

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

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[45] Rules of Civil Procedure, Rule 9, Sec. 3(b).

[46] G.R. No. 160895, October 30, 2006, 506 SCRA 134.

[47] *Martinez v. Republic, id.*

[48] *Rollo,* p. 167. Medical Report.

THIRD DIVISION

[G.R. No. 179922. December 16, 2008]

JUAN DE DIOS CARLOS, *petitioner, vs.* **FELICIDAD SANDOVAL, also known as FELICIDAD S. VDA. DE CARLOS or FELICIDAD SANDOVAL CARLOS or FELICIDAD SANDOVAL VDA. DE CARLOS, and TEOFILO CARLOS II,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; A.M. NO. 02-11-10-SC (RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES); JUDGMENT ON THE PLEADINGS, SUMMARY JUDGMENT OR CONFESSION OF JUDGMENT; NOT ALLOWED IN CASES OF NULLITY OR ANNULMENT OF MARRIAGE.— The grounds for declaration of absolute nullity of marriage must be proved. Neither judgment on the pleadings nor summary judgment is allowed. So is confession of judgment disallowed. x x x With the advent of A.M. No. 02-11-10-SC, known as *"Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages"*, the question on the application of summary judgments or even judgment on the pleadings in cases of nullity or annulment of marriage has been stamped with clarity. The significant principle laid down by the said Rule, which took effect on March 15, 2003 is found in Section 17, viz.: "SEC. 17. *Trial.* — (1) The presiding judge shall personally conduct the trial of the case. No delegation of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses. (2) *The grounds for declaration of absolute nullity or annulment of marriage must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed."* Likewise instructive is the Court's pronouncement in *Republic v. Sandiganbayan*. In that case, We excluded actions for nullity or annulment of marriage from the application of summary judgments. x x x Both the Civil Code and the Family Code ordain that the court should order the prosecuting attorney

to appear and intervene for the State. It is at this stage when the public prosecutor sees to it that there is no suppression of evidence. Concomitantly, even if there is no suppression of evidence, the public prosecutor has to make sure that the evidence to be presented or laid down before the court is not fabricated. To further bolster its role towards the preservation of marriage, the Rule on Declaration of Absolute Nullity of Void Marriages reiterates the duty of the public prosecutor, viz.: "SEC. 13. *Effect of failure to appear at the pre-trial.* — (a) x x x (b) x x x *If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.*" Truly, only the active participation of the public prosecutor or the Solicitor General will ensure that the interest of the State is represented and protected in proceedings for declaration of nullity of marriages by preventing the fabrication or suppression of evidence.

2. ID.; ID.; PETITION FOR DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGE; MAY BE FILED SOLELY BY THE HUSBAND OR THE WIFE; RATIONALE.— *A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or wife. Exceptions: (1) Nullity of marriage cases commenced before the effectivity of A.M. No. 02-11-10-SC; and (2) Marriages celebrated during the effectivity of the Civil Code.* Under the *Rule on Declaration of Absolute Nullity of Void Marriages* and Annulment of Voidable Marriages, the petition for declaration of absolute nullity of marriage may not be filed by any party outside of the marriage. The Rule made it exclusively a right of the spouses by stating: "SEC. 2. *Petition for declaration of absolute nullity of void marriages.* — (a) *Who may file. — A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife.*" Section 2 (a) of the Rule makes it the sole right of the husband or the wife to file a petition for declaration of absolute nullity of void marriage. The rationale of the Rule is enlightening, viz.: "*Only an aggrieved or injured spouse may file a petition for* annulment of voidable marriages or *declaration of absolute nullity of void marriages. Such petition cannot be filed by compulsory or intestate heirs of the spouses or by the State.* The Committee is of the belief that they do not have a legal right to file the

petition. *Compulsory or intestate heirs have only inchoate rights prior to the death of their predecessor, and, hence, can only question the validity of the marriage of the spouses upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.* On the other hand, the concern of the State is to preserve marriage and not to seek its dissolution."

3. ID.; ID.; ID.; ID.; REMEDY OF COMPULSORY OR INTESTATE HEIRS TO PROTECT THEIR SUCCESSIONAL RIGHT.— The advent of the Rule on Declaration of Absolute Nullity of Void Marriages marks the beginning of the end of the right of the heirs of the deceased spouse to bring a nullity of marriage case against the surviving spouse. But the Rule never intended to deprive the compulsory or intestate heirs of their successional rights. While A.M. No. 02-11-10-SC declares that a petition for declaration of absolute nullity of marriage may be filed solely by the husband or the wife, it does not mean that the compulsory or intestate heirs are without any recourse under the law. They can still protect their successional right, for, as stated in the Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, compulsory or intestate heirs can still question the validity of the marriage of the spouses, not in a proceeding for declaration of nullity but upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.

4. ID.; ID.; PROSPECTIVE IN ITS APPLICATION.— [T]he Rule does not apply to cases already commenced before March 15, 2003 although the marriage involved is within the coverage of the Family Code. This is so, as the new Rule which became effective on March 15, 2003 is prospective in its application. Thus, the Court held in *Enrico v. Heirs of Sps. Medinaceli,* viz.: *"As has been emphasized, A.M. No. 02-11-10-SC covers marriages under the Family Code of the Philippines, and is prospective in its application."*

5. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTY-IN-INTEREST; DEFINED.— The absence of a provision in the Civil Code cannot be construed as a license for any person to institute a nullity of marriage case. Such person must appear to be 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. Elsewise stated, plaintiff must be the real party-in-interest. For it is basic in procedural law that every action must be prosecuted and defended in the name of the real party-in-interest. Interest within the meaning of the rule means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action. When plaintiff is not the real party-in-interest, the case is dismissible on the ground of lack of cause of action.

6. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; LEGAL OR INTESTATE SUCCESSION; ORDER OF INTESTATE SUCCESSION; COLLATERAL RELATIVES; ACQUIRE SUCCESSIONAL RIGHTS OVER THE ESTATE IF THE DECEDENT DIES WITHOUT ISSUE AND WITHOUT ASCENDANTS IN THE DIRECT LINE.— [A] brother is not among those considered as compulsory heirs. But although a collateral relative, such as a brother, does not fall within the ambit of a compulsory heir, he still has a right to succeed to the estate. Articles 1001 and 1003 of the New Civil Code provide: "ART. 1001. *Should brothers and sisters* or their children *survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters* or their children *to the other half.* ART. 1003. *If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased* in accordance with the following articles." Indeed, only the presence of descendants, ascendants or illegitimate children excludes collateral relatives from succeeding to the estate of the decedent. The presence of legitimate, illegitimate, or adopted child or children of the deceased precludes succession by collateral relatives. Conversely, if there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the decedent.

7. ID.; FAMILY CODE; PATERNITY AND FILIATION; LEGITIMATE CHILDREN; AN ASSERTION BY THE MOTHER AGAINST THE LEGITIMACY OF HER CHILD

CANNOT AFFECT THE LEGITIMACY OF A CHILD BORN OR CONCEIVED WITHIN A VALID MARRIAGE. — Article 167 of the Family Code x x x protect[s] the status of legitimacy of a child, to wit: "ART. 167. *The child shall be considered legitimate although the mother may have declared against its legitimacy* or may have been sentenced as an adulteress." x x x The language of the law is unmistakable. An assertion by the mother against the legitimacy of her child cannot affect the legitimacy of a child born or conceived within a valid marriage.

APPEARANCES OF COUNSEL

Jaime S. Linsangan for petitioner.

Estella & Virtudazo Law Firm, Francisco L. Rosario, Jr. and *Manuel B. Ibong* for respondents.

D E C I S I O N

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

ONLY a spouse can initiate an action to sever the marital bond for marriages solemnized during the effectivity of the Family Code, except cases commenced prior to March 15, 2003. The nullity and annulment of a marriage cannot be declared in a judgment on the pleadings, summary judgment, or confession of judgment.

We pronounce these principles as We review on *certiorari* the Decision[1] of the Court of Appeals (CA) which reversed and set aside the summary judgment[2] of the Regional Trial Court (RTC) in an action for declaration of nullity of marriage, status of a child, recovery of property, reconveyance, sum of money, and damages.

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[1] *Rollo*, pp. 47-63. Dated October 15, 2002. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Cancio C. Garcia and Bernardo P. Abesamis, concurring.

[2] Civil Case No. 95-135.

The Facts

The events that led to the institution of the instant suit are unveiled as follows:

Spouses Felix B. Carlos and Felipa Elemia died intestate. They left six parcels of land to their compulsory heirs, Teofilo Carlos and petitioner Juan De Dios Carlos. The lots are particularly described as follows:

Parcel No. 1

Lot No. 162 of the MUNTINLUPA ESTATE SUBDIVISION, Case No. 6137 of the Court of Land Registration.

Exemption from the provisions of Article 567 of the Civil Code is specifically reserved.

Area: 1 hectare, 06 ares, 07 centares.

Parcel No. 2

A parcel of land (Lot No. 159-B), being a portion of Lot 159, situated in the Bo. of Alabang, Municipality of Muntinlupa, Province of Rizal, x x x containing an area of Thirteen Thousand Four Hundred Forty One (13,441) square meters.

Parcel No. 3

A parcel of land (Lot 159-B-2 of the subd. plan [LRC] Psd-325903, approved as a non-subd. project), being a portion of Lot 159-B [LRC] Psd- Alabang, Mun. of Muntinlupa, Metro Manila, Island of Luzon. Bounded on the NE, points 2 to 4 by Lot 155, Muntinlupa Estate; on the SE, point 4 to 5 by Lot 159-B-5; on the S, points 5 to 1 by Lot 159-B-3; on the W, points 1 to 2 by Lot 159-B-1 (Road widening) all of the subd. plan, containing an area of ONE HUNDRED THIRTY (130) SQ. METERS, more or less.

PARCEL No. 4

A parcel of land (Lot 28-C of the subd. plan Psd-13-007090, being a portion of Lot 28, Muntinlupa Estate, L.R.C. Rec. No. 6137), situated in the Bo. of Alabang, Mun. of Muntinlupa, Metro Manila. Bounded on the NE, along lines 1-2 by Lot 27, Muntinlupa Estate; on the East & SE, along lines 2 to 6 by Mangangata River; and on the West.,

along line 6-1, by Lot 28-B of the subd. plan x x x containing an area of ONE THUSAND AND SEVENTY-SIX (1,076) SQUARE METERS.

PARCEL No. 5

PARCELA DE TERRENO No. 50, Manzana No. 18, de la subd. de Solocan. Linda por el NW, con la parcela 49; por el NE, con la parcela 36; por el SE, con la parcela 51; y por el SW, con la calle Dos Castillas. Partiendo de un punto marcado 1 en el plano, el cual se halla a S. gds. 01'W, 72.50 mts. Desde el punto 1 de esta manzana, que es un mojon de concreto de la Ciudad de Manila, situado on el esquina E. que forman las Calles Laong Laan y Dos. Castillas, continiendo un extension superficial de CIENTO CINCUENTA (150) METROS CUADRADOS.

PAR-CEL No. 6

PARCELA DE TERRENO No. 51, Manzana No. 18, de la subd. De Solocon. Linda por el NW, con la parcela 50; por el NE, con la parcela 37; por el SE, con la parcela 52; por el SW, con la Calle Dos Castillas. Partiendo de un punto Marcado 1 en el plano, el cual se halla at S. 43 gds. 01'E, 82.50 mts. Desde el punto 1 de esta manzana, que es un mojon de concreto de la Ciudad de Manila, situado on el esquina E. que forman las Calles Laong Laan y Dos. Castillas, continiendo una extension superficial de CIENTO CINCUENTA (150) METROS CUADRADOS.[3]

During the lifetime of Felix Carlos, he agreed to transfer his estate to Teofilo. The agreement was made in order to avoid the payment of inheritance taxes. Teofilo, in turn, undertook to deliver and turn over the share of the other legal heir, petitioner Juan De Dios Carlos.

Eventually, the first three (3) parcels of land were transferred and registered in the name of Teofilo. These three (3) lots are now covered by Transfer Certificate of Title (TCT) No. 234824 issued by the Registry of Deeds of Makati City; TCT No. 139061 issued by the Registry of Deeds of Makati City; and TCT No. 139058 issued by the Registry of Deeds of Makati City.

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[3] *Rollo,* pp. 49-51.

Parcel No. 4 was registered in the name of petitioner. The lot is now covered by TCT No. 160401 issued by the Registry of Deeds of Makati City.

On May 13, 1992, Teofilo died intestate. He was survived by respondents Felicidad and their son, Teofilo Carlos II (Teofilo II). Upon Teofilo's death, Parcel Nos. 5 & 6 were registered in the name of respondent Felicidad and co-respondent, Teofilo II. The said two (2) parcels of land are covered by TCT Nos. 219877 and 210878, respectively, issued by the Registry of Deeds of Manila.

In 1994, petitioner instituted a suit against respondents before the RTC in Muntinlupa City, docketed as Civil Case No. 94-1964. In the said case, the parties submitted and caused the approval of a partial compromise agreement. Under the compromise, the parties acknowledged their respective shares in the proceeds from the sale of a portion of the first parcel of land. This includes the remaining 6,691-square-meter portion of said land.

On September 17, 1994, the parties executed a deed of extrajudicial partition, dividing the remaining land of the first parcel between them.

Meanwhile, in a separate case entitled *Rillo v. Carlos*,[4] 2,331 square meters of the second parcel of land were adjudicated in favor of plaintiffs *Rillo*. The remaining 10,000-square meter portion was later divided between petitioner and respondents.

The division was incorporated in a supplemental compromise agreement executed on August 17, 1994, with respect to Civil Case No. 94-1964. The parties submitted the supplemental compromise agreement, which was approved accordingly.

Petitioner and respondents entered into two more contracts in August 1994. Under the contracts, the parties equally divided between them the third and fourth parcels of land.

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[4] Docketed as Civil Case No. 11975, CA decision, p. 6.

In August 1995, petitioner commenced an action, docketed as Civil Case No. 95-135, against respondents before the court *a quo* with the following causes of action: (a) declaration of nullity of marriage; (b) status of a child; (c) recovery of property; (d) reconveyance; and (e) sum of money and damages. The complaint was raffled to Branch 256 of the RTC in Muntinlupa.

In his complaint, petitioner asserted that the marriage between his late brother Teofilo and respondent Felicidad was a nullity in view of the absence of the required marriage license. He likewise maintained that his deceased brother was neither the natural nor the adoptive father of respondent Teofilo Carlos II.

Petitioner likewise sought the avoidance of the contracts he entered into with respondent Felicidad with respect to the subject real properties. He also prayed for the cancellation of the certificates of title issued in the name of respondents. He argued that the properties covered by such certificates of title, including the sums received by respondents as proceeds, should be reconveyed to him.

Finally, petitioner claimed indemnification as and by way of moral and exemplary damages, attorney's fees, litigation expenses, and costs of suit.

On October 16, 1995, respondents submitted their answer. They denied the material averments of petitioner's complaint. Respondents contended that the dearth of details regarding the requisite marriage license did not invalidate Felicidad's marriage to Teofilo. Respondents declared that Teofilo II was the illegitimate child of the deceased Teofilo Carlos with another woman.

On the grounds of lack of cause of action and lack of jurisdiction over the subject matter, respondents prayed for the dismissal of the case before the trial court. They also asked that their counterclaims for moral and exemplary damages, as well as attorney's fees, be granted.

But before the parties could even proceed to pre-trial, respondents moved for summary judgment. Attached to the motion was the affidavit of the justice of the peace who solemnized

the marriage. Respondents also submitted the Certificate of Live Birth of respondent Teofilo II. In the certificate, the late Teofilo Carlos and respondent Felicidad were designated as parents.

On January 5, 1996, petitioner opposed the motion for summary judgment on the ground of irregularity of the contract evidencing the marriage. In the same breath, petitioner lodged his own motion for summary judgment. Petitioner presented a certification from the Local Civil Registrar of Calumpit, Bulacan, certifying that there is no record of birth of respondent Teofilo II.

Petitioner also incorporated in the counter-motion for summary judgment the testimony of respondent Felicidad in another case. Said testimony was made in Civil Case No. 89-2384, entitled *Carlos v. Gorospe*, before the RTC Branch 255, Las Piñas. In her testimony, respondent Felicidad narrated that co-respondent Teofilo II is her child with Teofilo.[5]

Subsequently, the Office of the City Prosecutor of Muntinlupa submitted to the trial court its report and manifestation, discounting the possibility of collusion between the parties.

RTC and CA Dispositions

On April 8, 1996, the RTC rendered judgment, disposing as follows:

WHEREFORE, premises considered, defendant's (respondent's) Motion for Summary Judgment is hereby denied. Plaintiff's (petitioner's) Counter-Motion for Summary Judgment is hereby granted and summary judgment is hereby rendered in favor of plaintiff as follows:

1. Declaring the marriage between defendant Felicidad Sandoval and Teofilo Carlos solemnized at Silang, Cavite on May 14, 1962, evidenced by the Marriage Certificate submitted in this case, null and void *ab initio* for lack of the requisite marriage license;

2. Declaring that the defendant minor, Teofilo S. Carlos II, is not the natural, illegitimate, or legally adopted child of the late Teofilo E. Carlos;

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[5] *Rollo,* p. 55.

3. Ordering defendant Sandoval to pay and restitute to plaintiff the sum of ₱18,924,800.00 together with the interest thereon at the legal rate from date of filing of the instant complaint until fully paid;

4. Declaring plaintiff as the sole and exclusive owner of the parcel of land, less the portion adjudicated to plaintiffs in Civil Case No. 11975, covered by TCT No. 139061 of the Register of Deeds of Makati City, and ordering said Register of Deeds to cancel said title and to issue another title in the sole name of plaintiff herein;

5. Declaring the Contract, Annex "K" of complaint, between plaintiff and defendant Sandoval null and void, and ordering the Register of Deeds of Makati City to cancel TCT No. 139058 in the name of Teofilo Carlos, and to issue another title in the sole name of plaintiff herein;

6. Declaring the Contract, Annex M of the complaint, between plaintiff and defendant Sandoval null and void;

7. Ordering the cancellation of TCT No. 210877 in the names of defendant Sandoval and defendant minor Teofilo S. Carlos II and ordering the Register of Deeds of Manila to issue another title in the exclusive name of plaintiff herein;

8. Ordering the cancellation of TCT No. 210878 in the name of defendant Sandoval and defendant Minor Teofilo S. Carlos II and ordering the Register of Deeds of Manila to issue another title in the sole name of plaintiff herein.

Let this case be set for hearing for the reception of plaintiff's evidence on his claim for moral damages, exemplary damages, attorney's fees, appearance fees, and litigation expenses on June 7, 1996 at 1:30 o'clock in the afternoon.

SO ORDERED.[6]

Dissatisfied, respondents appealed to the CA. In the appeal, respondents argued, *inter alia*, that the trial court acted without or in excess of jurisdiction in rendering summary judgment annulling the marriage of Teofilo, Sr. and Felicidad and in declaring Teofilo II as not an illegitimate child of Teofilo, Sr.

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[6] CA *rollo*, pp. 48-49.

On October 15, 2002, the CA reversed and set aside the RTC ruling, disposing as follows:

> WHEREFORE, the summary judgment appealed from is REVERSED and SET ASIDE and in lieu thereof, a new one is entered REMANDING the case to the court of origin for further proceedings.
>
> SO ORDERED.[7]

The CA opined:

> We find the rendition of the herein appealed summary judgment by the court *a quo* contrary to law and public policy as ensconced in the aforesaid safeguards. The fact that it was appellants who first sought summary judgment from the trial court, did not justify the grant thereof in favor of appellee. Not being an action "to recover upon a claim" or "to obtain a declaratory relief," the rule on summary judgment apply *(sic)* to an action to annul a marriage. The mere fact that no genuine issue was presented and the desire to expedite the disposition of the case cannot justify a misinterpretation of the rule. The first paragraph of Article 88 and 101 of the Civil Code expressly prohibit the rendition of decree of annulment of a marriage upon a stipulation of facts or a confession of judgment. Yet, the affidavits annexed to the petition for summary judgment practically amount to these methods explicitly proscribed by the law.
>
> We are not unmindful of appellee's argument that the foregoing safeguards have traditionally been applied to prevent collusion of spouses in the matter of dissolution of marriages and that the death of Teofilo Carlos on May 13, 1992 had effectively dissolved the marriage herein impugned. The fact, however, that appellee's own brother and appellant Felicidad Sandoval lived together as husband and wife for thirty years and that the annulment of their marriage is the very means by which the latter is sought to be deprived of her participation in the estate left by the former call for a closer and more thorough inquiry into the circumstances surrounding the case. Rather that the summary nature by which the court *a quo* resolved the issues in the case, the rule is to the effect that the material facts alleged in the complaint for annulment of marriage should always be proved. Section 1, Rule 19 of the Revised Rules of Court provides:

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[7] *Id.* at 63.

> "Section 1. *Judgment on the pleadings.*— Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. But in actions for annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved." (Underscoring supplied)

Moreover, even if We were to sustain the applicability of the rules on summary judgment to the case at bench, Our perusal of the record shows that the finding of the court *a quo* for appellee would still not be warranted. While it may be readily conceded that a valid marriage license is among the formal requisites of marriage, the absence of which renders the marriage void *ab initio* pursuant to Article 80(3) in relation to Article 58 of the Civil Code the failure to reflect the serial number of the marriage license on the marriage contract evidencing the marriage between Teofilo Carlos and appellant Felicidad Sandoval, although irregular, is not as fatal as appellee represents it to be. Aside from the dearth of evidence to the contrary, appellant Felicidad Sandoval's affirmation of the existence of said marriage license is corroborated by the following statement in the affidavit executed by Godofredo Fojas, then Justice of the Peace who officiated the impugned marriage, to wit:

> "That as far as I could remember, there was a marriage license issued at Silang, Cavite on May 14, 1962 as basis of the said marriage contract executed by Teofilo Carlos and Felicidad Sandoval, but the number of said marriage license was inadvertently not placed in the marriage contract for the reason that it was the Office Clerk who filled up the blanks in the Marriage Contract who in turn, may have overlooked the same."

Rather than the inferences merely drawn by the trial court, We are of the considered view that the veracity and credibility of the foregoing statement as well as the motivations underlying the same should be properly threshed out in a trial of the case on the merits.

If the non-presentation of the marriage contract — the primary evidence of marriage — is not proof that a marriage did not take place, neither should appellants' non-presentation of the subject marriage license be taken as proof that the same was not procured. The burden of proof to show the nullity of the marriage, it must be emphasized, rests upon the plaintiff and any doubt should be resolved in favor of the validity of the marriage.

Considering that the burden of proof also rests on the party who disputes the legitimacy of a particular party, the same may be said of the trial court's rejection of the relationship between appellant Teofilo Carlos II and his putative father on the basis of the inconsistencies in appellant Felicidad Sandoval's statements. Although it had effectively disavowed appellant's prior claims regarding the legitimacy of appellant Teofilo Carlos II, the averment in the answer that he is the illegitimate son of appellee's brother, to Our mind, did not altogether foreclose the possibility of the said appellant's illegitimate filiation, his right to prove the same or, for that matter, his entitlement to inheritance rights as such.

Without trial on the merits having been conducted in the case, We find appellee's bare allegation that appellant Teofilo Carlos II was merely purchased from an indigent couple by appellant Felicidad Sandoval, on the whole, insufficient to support what could well be a minor's total forfeiture of the rights arising from his putative filiation. Inconsistent though it may be to her previous statements, appellant Felicidad Sandoval's declaration regarding the illegitimate filiation of Teofilo Carlos II is more credible when considered in the light of the fact that, during the last eight years of his life, Teofilo Carlos allowed said appellant the use of his name and the shelter of his household. The least that the trial court could have done in the premises was to conduct a trial on the merits in order to be able to thoroughly resolve the issues pertaining to the filiation of appellant Teofilo Carlos II.[8]

On November 22, 2006, petitioner moved for reconsideration and for the inhibition of the *ponente*, Justice Rebecca De Guia-Salvador. The CA denied the twin motions.

Issues

In this petition under Rule 45, petitioner hoists the following issues:

1. That, in reversing and setting aside the Summary Judgment under the Decision, Annex A hereof, and in denying petitioner's Motion for reconsideration under the Resolution, Annex F hereof, with respect to the nullity of the impugned marriage, petitioner respectfully submits that the Court of Appeals committed a grave reversible error in

[8] *Id.* at 60-63.

applying Articles 88 and 101 of the Civil Code, despite the fact that the circumstances of this case are different from that contemplated and intended by law, or has otherwise decided a question of substance not theretofore decided by the Supreme Court, or has decided it in a manner probably not in accord with law or with the applicable decisions of this Honorable Court;

2. That in setting aside and reversing the Summary Judgment and, in lieu thereof, entering another remanding the case to the court of origin for further proceedings, petitioner most respectfully submits that the Court of Appeals committed a serious reversible error in applying Section 1, Rule 19 (now Section 1, Rule 34) of the Rules of Court providing for judgment on the pleadings, instead of Rule 35 governing Summary Judgments;

3. That in reversing and setting aside the Summary Judgment and, in lieu thereof, entering another remanding the case to the court of origin for further proceedings, petitioner most respectfully submits that the Court of Appeals committed grave abuse of discretion, disregarded judicial admissions, made findings on ground of speculations, surmises, and conjectures, or otherwise committed misapplications of the laws and misapprehension of the facts.[9] (Underscoring supplied)

Essentially, the Court is tasked to resolve whether a marriage may be declared void *ab initio* through a judgment on the pleadings or a summary judgment and without the benefit of a trial. But there are other procedural issues, including the capacity of one who is not a spouse in bringing the action for nullity of marriage.

Our Ruling

I. The grounds for declaration of absolute nullity of marriage must be proved. Neither judgment on the pleadings nor summary judgment is allowed. So is confession of judgment disallowed.

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[9] *Rollo,* pp. 24-25.

Petitioner faults the CA in applying Section 1, Rule 19[10] of the Revised Rules of Court, which provides:

> SECTION 1. *Judgment on the pleadings.* — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. But in actions for annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

He argues that the CA should have applied Rule 35 of the Rules of Court governing summary judgment, instead of the rule on judgment on the pleadings.

Petitioner is misguided. The CA did not limit its finding solely within the provisions of the Rule on judgment on the pleadings. In disagreeing with the trial court, the CA likewise considered the provisions on summary judgments, to wit:

> Moreover, even if We are to sustain the applicability of the rules on summary judgment to the case at bench, Our perusal of the record shows that the finding of the court *a quo* for appellee would still not be warranted. x x x[11]

But whether it is based on judgment on the pleadings or summary judgment, the CA was correct in reversing the summary judgment rendered by the trial court. Both the rules on judgment on the pleadings and summary judgments have no place in cases of declaration of absolute nullity of marriage and even in annulment of marriage.

With the advent of A.M. No. 02-11-10-SC, known as "*Rule on Declaration of Absolute Nullity of Void Marriages and*

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[10] Rules of Civil Procedure (1997), Rule 34, Sec. 1.

> SECTION 1. *Judgment on the pleadings.*— Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

[11] CA *rollo,* p. 61.

Annulment of Voidable Marriages," the question on the application of summary judgments or even judgment on the pleadings in cases of nullity or annulment of marriage has been stamped with clarity. The significant principle laid down by the said Rule, which took effect on March 15, 200312 is found in Section 17, *viz.*:

> SEC. 17. *Trial.* — (1) The presiding judge shall personally conduct the trial of the case. No delegation of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.
>
> (2) The grounds for declaration of absolute nullity or annulment of marriage must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed. (Underscoring supplied)

Likewise instructive is the Court's pronouncement in *Republic v. Sandiganbayan*.[13] In that case, We excluded actions for nullity or annulment of marriage from the application of summary judgments.

> Prescinding from the foregoing discussion, save for annulment of marriage or declaration of its nullity or for legal separation, summary judgment is applicable to all kinds of actions.[14] (Underscoring supplied)

By issuing said summary judgment, the trial court has divested the State of its lawful right and duty to intervene in the case. The participation of the State is not terminated by the declaration of the public prosecutor that no collusion exists between the parties. The State should have been given the opportunity to

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[12] Sec. 25. *Effectivity.*— This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

[13] G.R. No. 152154, November 18, 2003, 416 SCRA 133, citing Family Code, Arts. 48 & 60, and *Roque v. Encarnacion*, 96 Phil. 643 (1954).

[14] *Republic v. Sandiganbayan, id.* at 143.

present controverting evidence before the judgment was rendered.[15]

Both the Civil Code and the Family Code ordain that the court should order the prosecuting attorney to appear and intervene for the State. It is at this stage when the public prosecutor sees to it that there is no suppression of evidence. Concomitantly, even if there is no suppression of evidence, the public prosecutor has to make sure that the evidence to be presented or laid down before the court is not fabricated.

To further bolster its role towards the preservation of marriage, the Rule on Declaration of Absolute Nullity of Void Marriages reiterates the duty of the public prosecutor, *viz.*:

SEC. 13. *Effect of failure to appear at the pre-trial.*— (a) x x x

(b) x x x If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence. (Underscoring supplied)

Truly, only the active participation of the public prosecutor or the Solicitor General will ensure that the interest of the State is represented and protected in proceedings for declaration of nullity of marriages by preventing the fabrication or suppression of evidence.[16]

II. A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or wife. Exceptions: (1) Nullity of marriage cases commenced before the effectivity of A.M. No. 02-11-10-SC; and (2) Marriages celebrated during the effectivity of the Civil Code.

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[15] *Republic v. Cuison-Melgar,* G.R. No. 139676, March 31, 2006, 486 SCRA 177, citing *Malcampo-Sin v. Sin*, G.R. No. 137590, March 26, 2001, 355 SCRA 285, 289, and *Republic v. Dagdag,* G.R. No. 109975, February 9, 2001, 351 SCRA 425, 435.

[16] *Id.* at 187-188, citing *Republic v. Iyoy,* G.R. No. 152577, September 21, 2005, 470 SCRA 508, 529, and *Ancheta v. Ancheta,* G.R. No. 145370, March 4, 2004, 424 SCRA 725, 740.

Under the **Rule on Declaration of Absolute Nullity of Void Marriages** and Annulment of Voidable Marriages, the petition for declaration of absolute nullity of marriage may not be filed by any party outside of the marriage. The Rule made it exclusively a right of the spouses by stating:

> SEC. 2. *Petition for declaration of absolute nullity of void marriages.—*
>
> (a) *Who may file.—* A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife. (Underscoring supplied)

Section 2(a) of the Rule makes it the sole right of the husband or the wife to file a petition for declaration of absolute nullity of void marriage. The rationale of the Rule is enlightening, *viz.*:

> Only an aggrieved or injured spouse may file a petition for annulment of voidable marriages or declaration of absolute nullity of void marriages. Such petition cannot be filed by compulsory or intestate heirs of the spouses or by the State. The Committee is of the belief that they do not have a legal right to file the petition. Compulsory or intestate heirs have only inchoate rights prior to the death of their predecessor, and, hence, can only question the validity of the marriage of the spouses upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts. On the other hand, the concern of the State is to preserve marriage and not to seek its dissolution.[17] (Underscoring supplied)

The new Rule recognizes that the husband and the wife are the sole architects of a healthy, loving, peaceful marriage. They are the only ones who can decide when and how to build the foundations of marriage. The spouses alone are the engineers of their marital life. They are simultaneously the directors and actors of their matrimonial true-to-life play. Hence, they alone

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[17] *Enrico v. Heirs of Sps. Medinaceli*, G.R. No. 173614, September 28, 2007, 534 SCRA 418, 429, citing Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders.

can and should decide when to take a cut, but only in accordance with the grounds allowed by law.

The innovation incorporated in A.M. No. 02-11-10-SC sets forth a demarcation line between marriages covered by the Family Code and those solemnized under the Civil Code. The Rule extends only to marriages entered into during the effectivity of the Family Code which took effect on August 3, 1988.[18]

The advent of the Rule on Declaration of Absolute Nullity of Void Marriages marks the beginning of the end of the right of the heirs of the deceased spouse to bring a nullity of marriage case against the surviving spouse. But the Rule never intended to deprive the compulsory or intestate heirs of their successional rights.

While A.M. No. 02-11-10-SC declares that a petition for declaration of absolute nullity of marriage may be filed solely by the husband or the wife, it does not mean that the compulsory or intestate heirs are without any recourse under the law. They can still protect their successional right, for, as stated in the Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, compulsory or intestate heirs can still question the validity of the marriage of the spouses, not in a proceeding for declaration of nullity but upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.[19]

It is emphasized, however, that the Rule does not apply to cases already commenced before March 15, 2003 although the marriage involved is within the coverage of the Family Code. This is so, as the new Rule which became effective on March 15, 2003[20] is prospective in its application.

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[18] *Id.* at 427-428, citing *Modequillo v. Brava,* G.R. No. 86355, May 31, 1990, 185 SCRA 766, 772. (Note in the citation omitted.)

[19] *Id.* at 429-430.

[20] A.M. No. 02-11-10-SC – Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

Thus, the Court held in *Enrico v. Heirs of Sps. Medinaceli*,[21] *viz.*:

> As has been emphasized, A.M. No. 02-11-10-SC covers marriages under the Family Code of the Philippines, and is prospective in its application.[22] (Underscoring supplied)

Petitioner commenced the nullity of marriage case against respondent Felicidad in 1995. The marriage in controversy was celebrated on May 14, 1962. Which law would govern depends upon when the marriage took place.[23]

The marriage having been solemnized prior to the effectivity of the Family Code, the applicable law is the Civil Code which was the law in effect at the time of its celebration.[24] But the Civil Code is silent as to who may bring an action to declare the marriage void. Does this mean that any person can bring an action for the declaration of nullity of marriage?

We respond in the negative. The absence of a provision in the Civil Code cannot be construed as a license for any person to institute a nullity of marriage case. Such person must appear to be 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.[25] Elsewise stated, plaintiff must be the real party-in-interest. For it is basic in procedural law that every action must be prosecuted and defended in the name of the real party-in-interest.[26]

SEC. 25. *Effectivity.* — This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

[21] *Supra* note 17.

[22] *Enrico v. Heirs of Sps. Medinaceli, id.* at 428.

[23] *Malang v. Moson*, G.R. No. 119064, August 22, 2000, 338 SCRA 393.

[24] See *Republic v. Dayot*, G.R. No. 175581, and *Tecson-Dayot v. Dayot*, G.R. No. 179474, March 28, 2008; *Alcantara v. Alcantara*, G.R. No. 167746, August 28, 2007, 531 SCRA 446.

[25] *Republic v. Agunoy, Sr.*, G.R. No. 155394, February 17, 2005, 451 SCRA 735, 746.

[26] *Oco v. Limbaring*, G.R. No. 161298, January 31, 2006, 481 SCRA 348.

Interest within the meaning of the rule means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action. When plaintiff is not the real party-in-interest, the case is dismissible on the ground of lack of cause of action.[27]

Illuminating on this point is *Amor-Catalan v. Court of Appeals*,[28] where the Court held:

> True, under the New Civil Code which is the law in force at the time the respondents were married, or even in the Family Code, there is no specific provision as to who can file a petition to declare the nullity of marriage; however, only a party who can demonstrate *"proper interest"* can file the same. A petition to declare the nullity of marriage, like any other actions, *must be prosecuted or defended in the name of the real party-in-interest* and *must be based on a cause of action*. Thus, in *Niñal v. Badayog*, the Court held that the children have the personality to file the petition to declare the nullity of marriage of their deceased father to their stepmother as it affects their successional rights.

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[27] *Id.* at 358, citing *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507, 521; *Pascual v. Court of Appeals*, G.R. No. 115925, August 15, 2003, 409 SCRA 105, 117; and *Bank of America NT & SA v. Court of Appeals*, 448 Phil. 181, 194-195 (2003); *Borlongan v. Madrideo*, 380 Phil. 215, 224 (2000); *Mathay v. Court of Appeals*, 378 Phil. 466, 482 (1999); *Ralla v. Ralla*, G.R. No. 78646, July 23, 1991, 199 SCRA 495, 499; *Rebollido v. Court of Appeals*, G.R. No. 81123, February 28, 1989, 170 SCRA 800, 806; *Chua v. Torres*, G.R. No. 151900, August 30, 2005, 468 SCRA 358, citing *Tan v. Court of Appeals*, G.R. No. 127210, August 7, 2003, 408 SCRA 470, 475-76; citing in turn *University of the Philippines Board of Regents v. Ligot-Telan*, G.R. No. 110280, October 21, 1993, 227 SCRA 342, 355; *Ralla v. Ralla, supra*; *Rebollido v. Court of Appeals, supra*; *Shipside, Inc. v. Court of Appeals*, G.R. No. 143377, February 20, 2001, 352 SCRA 334, 346, in turn citing *Pioneer Insurance & Surety Corporation v. Court of Appeals*, G.R. Nos. 84197 & 84157, July 18, 1989, 175 SCRA 668.

[28] G.R. No. 167109, February 6, 2007, 514 SCRA 607, citing RULES OF COURT, Rule 3, Sec. 2, Rule 2, Sec. 1; *Niñal v. Badayog*, G.R. No. 133778, March 14, 2000, 328 SCRA 122.

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In fine, petitioner's personality to file the petition to declare the nullity of marriage cannot be ascertained because of the absence of the divorce decree and the foreign law allowing it. Hence, a remand of the case to the trial court for reception of additional evidence is necessary to determine whether respondent Orlando was granted a divorce decree and whether the foreign law which granted the same allows or restricts remarriage. If it is proved that a valid divorce decree was obtained and the same did not allow respondent Orlando's remarriage, then the trial court should declare respondent's marriage as bigamous and void *ab initio* but reduced the amount of moral damages from ₱300,000.00 to ₱50,000.00 and exemplary damages from ₱200,000.00 to ₱25,000.00. On the contrary, if it is proved that a valid divorce decree was obtained which allowed Orlando to remarry, then the trial court must dismiss the instant petition to declare nullity of marriage on the ground that petitioner Felicitas Amor-Catalan lacks legal personality to file the same.[29] (Underscoring supplied)

III. The case must be remanded to determine whether or not petitioner is a real-party-in-interest to seek the declaration of nullity of the marriage in controversy.

In the case at bench, the records reveal that when Teofilo died intestate in 1992, his only surviving compulsory heirs are respondent Felicidad and their son, Teofilo II. Under the law on succession, successional rights are transmitted from the moment of death of the decedent and the compulsory heirs are called to succeed by operation of law.[30]

Upon Teofilo's death in 1992, all his property, rights and obligations to the extent of the value of the inheritance are transmitted to his compulsory heirs. These heirs were respondents Felicidad and Teofilo II, as the surviving spouse and child, respectively.

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[29] *Amor-Catalan v. Court of Appeals, id.* at 614-615.

[30] *Rabadilla v. Court of Appeals,* G.R. No. 113725, June 29, 2000, 334 SCRA 522.

Article 887 of the Civil Code outlined who are compulsory heirs, to wit:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3) The widow or widower;

(4) Acknowledged natural children, and natural children by legal fiction;

(5) Other illegitimate children referred to in Article 287 of the Civil Code.[31]

Clearly, a brother is not among those considered as compulsory heirs. But although a collateral relative, such as a brother, does not fall within the ambit of a compulsory heir, he still has a right to succeed to the estate. Articles 1001 and 1003 of the New Civil Code provide:

ART. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

ART. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles. (Underscoring supplied)

Indeed, only the presence of descendants, ascendants or illegitimate children excludes collateral relatives from succeeding to the estate of the decedent. The presence of legitimate,

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[31] Paragraphs 4 & 5 are no longer controlling. The distinctions among different classes of illegitimate children under the Civil Code have been removed. All of them fall in the category of illegitimate children, as provided under Article 165 of the Family Code:

> Article 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code.

illegitimate, or adopted child or children of the deceased precludes succession by collateral relatives.[32] Conversely, if there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the decedent.[33]

If respondent Teofilo II is declared and finally proven not to be the legitimate, illegitimate, or adopted son of Teofilo, petitioner would then have a personality to seek the nullity of marriage of his deceased brother with respondent Felicidad. This is so, considering that collateral relatives, like a brother and sister, acquire successional right over the estate if the decedent dies without issue and without ascendants in the direct line.

The records reveal that Teofilo was predeceased by his parents. He had no other siblings but petitioner. Thus, if Teofilo II is finally found and proven to be not a legitimate, illegitimate, or adopted son of Teofilo, petitioner succeeds to the other half of the estate of his brother, the first half being allotted to the widow pursuant to Article 1001 of the New Civil Code. This makes petitioner a real-party-interest to seek the declaration of absolute nullity of marriage of his deceased brother with respondent Felicidad. If the subject marriage is found to be void *ab initio*, petitioner succeeds to the entire estate.

It bears stressing, however, that the legal personality of petitioner to bring the nullity of marriage case is contingent upon the final declaration that Teofilo II is not a legitimate, adopted, or illegitimate son of Teofilo.

If Teofilo II is proven to be a legitimate, illegitimate, or legally adopted son of Teofilo, then petitioner has no legal personality

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[32] See *Gonzales v. Court of Appeals*, G.R. No. 117740, October 30, 1998, 298 SCRA 322; see also *Reyes v. Sotero*, G.R. No. 167405, February 16, 2006, 482 SCRA 520; *Pedrosa v. Court of Appeals*, G.R. No. 118680, March 5, 2001, 353 SCRA 620; *Heirs of Ignacio Conti v. Court of Appeals*, G.R. No. 118464, December 21, 1998, 300 SCRA 345.

[33] *Heirs of Ignacio Conti v. Court of Appeals, supra.*

to ask for the nullity of marriage of his deceased brother and respondent Felicidad. This is based on the ground that he has no successional right to be protected, hence, does not have proper interest. For although the marriage in controversy may be found to be void from the beginning, still, petitioner would not inherit. This is because the presence of descendant, illegitimate,[34] or even an adopted child[35] excludes the collateral relatives from inheriting from the decedent.

Thus, the Court finds that a remand of the case for trial on the merits to determine the validity or nullity of the subject marriage is called for. **But the RTC is strictly instructed to dismiss the nullity of marriage case for lack of cause of action if it is proven by evidence that Teofilo II is a legitimate, illegitimate, or legally adopted son of Teofilo Carlos, the deceased brother of petitioner**.

IV. Remand of the case regarding the question of filiation of respondent Teofilo II is proper and in order. There is a need to vacate the disposition of the trial court as to the other causes of action before it.

Petitioner did not assign as error or interpose as issue the ruling of the CA on the remand of the case concerning the filiation of respondent Teofilo II. This notwithstanding, We should not leave the matter hanging in limbo.

This Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[36]

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[34] *Gonzales v. Court of Appeals, supra* note 32.

[35] *Reyes v. Sotero, supra* note 32; *Pedrosa v. Court of Appeals, supra* note 32.

[36] *Maricalum Mining Corporation v. Brion,* G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, citing *Sociedad Europea de Financiacion, S.A. v. Court of Appeals,* G.R. No. 75787, January 21, 1991, 193 SCRA 105, 114, citing in turn *Saura Import & Export Co., Inc. v. Philippine International Co., Inc.*, 118 Phil. 150, 156 (1963); and *Miguel v. Court of Appeals,* 140 Phil. 304, 312 (1969).

We agree with the CA that without trial on the merits having been conducted in the case, petitioner's bare allegation that respondent Teofilo II was adopted from an indigent couple is insufficient to support a total forfeiture of rights arising from his putative filiation. However, We are not inclined to support its pronouncement that the declaration of respondent Felicidad as to the illegitimate filiation of respondent Teofilo II is more credible. For the guidance of the appellate court, such declaration of respondent Felicidad should not be afforded credence. We remind the CA of the guaranty provided by Article 167 of the Family Code to protect the status of legitimacy of a child, to wit:

> ARTICLE 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. (Underscoring supplied)

It is stressed that Felicidad's declaration against the legitimate status of Teofilo II is the very act that is proscribed by Article 167 of the Family Code. The language of the law is unmistakable. An assertion by the mother against the legitimacy of her child cannot affect the legitimacy of a child born or conceived within a valid marriage.[37]

Finally, the disposition of the trial court in favor of petitioner for causes of action concerning reconveyance, recovery of property, and sum of money must be vacated. This has to be so, as said disposition was made on the basis of its finding that the marriage in controversy was null and void *ab initio.*

WHEREFORE, the appealed Decision is *MODIFIED* as follows:

1. The case is *REMANDED* to the Regional Trial Court in regard to the action on the status and filiation of respondent Teofilo Carlos II and the validity or nullity of marriage between respondent Felicidad Sandoval and the late Teofilo Carlos;

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[37] *Concepcion v. Court of Appeals,* G.R. No. 123450, August 31, 2005, 468 SCRA 438.

2. If Teofilo Carlos II is proven to be the legitimate, or illegitimate, or legally adopted son of the late Teofilo Carlos, the RTC is strictly *INSTRUCTED* to *DISMISS* the action for nullity of marriage for lack of cause of action;

3. The disposition of the RTC in Nos. 1 to 8 of the *fallo* of its decision is *VACATED AND SET ASIDE*.

The Regional Trial Court is *ORDERED* to conduct trial on the merits with dispatch and to give this case priority in its calendar.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181492. December 16, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SAMUEL OBMIRANIS *y* ORETA,** *appellant*.

SYLLABUS

1. CRIMINAL LAW; *CORPUS DELICTI*; IN PROSECUTIONS INVOLVING NARCOTICS, THE NARCOTIC SUBSTANCE ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE.— In criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to

sustain a judgment of conviction beyond reasonable doubt. It is therefore of prime importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

2. REMEDIAL LAW; EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; EXPLAINED.— Board Regulation No. 1, series of 2002 defines chain of custody as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would thus include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the same would admit how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

3. ID.; ID.; ID.; ID.; RATIONALE.— [A]lthough testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they

are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination, substitution and exchange — whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not. It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical. Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied — a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); GUIDELINES IN HANDLING NARCOTIC SUBSTANCES AND DANGEROUS DRUGS SEIZED FROM DRUG OFFENDERS.— Section 21 of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs to, 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 2 of its implementing rules as well as in Section 2 of the Dangerous Drugs Board Regulation No. 1, series of 2002.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; ELUCIDATED.— It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the

fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. There is indeed merit in the contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. *People v. Dulay* and *People v. Ganenas* in fact both suggest that the presumption of regularity is disputed where there is deviation from the regular performance of duty. Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.

6. ID.; ID.; ID.; THE BURDEN OF PROVING THE GUILT OF AN ACCUSED RESTS ON THE PROSECUTION WHICH MUST DRAW STRENGTH FROM ITS OWN EVIDENCE AND NOT FROM THE WEAKNESS OF THE DEFENSE.— [T]he burden of proving the guilt of an accused rests on the prosecution which must draw strength from its own evidence and not from the weakness of the defense. The rule, in a constitutional system like ours, is invariable regardless of the reputation of the accused because the law presumes his innocence until the contrary is shown. *In dubio pro reo*. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.

APPEARANCES OF COUNSEL

***The Solicitor Gen*eral for appellee.**
Isagani Rabe for appellant.

D E C I S I O N

TINGA, *J.*:

This is an appeal filed by Samuel Obmiranis *y* Oreta (appellant) who was charged with violation of Section 5 in relation to

Section 26 of Republic Act (R.A.) No. 9165.1 He was allegedly caught in a buy-bust operation by elements of the Manila Western Police District (MWPD) while offering to sell methylamphetamine hydrochloride, a dangerous drug locally known as *shabu*. The criminal information filed with the Regional Trial Court (RTC) of Manila, Branch 22 accused him as follows:

> That on or about May 18, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly attempt to sell or offer for sale one (1) transparent plastic sachet containing TWO POINT EIGHT ZERO ZERO (2.800) grams of white crystalline substance known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.
>
> Contrary to law.[3]

At the pre-trial, both the prosecution and the defense stipulated on the qualification of Forensic Chemist Elisa Reyes and, thus, both parties dispensed with her testimony. The prosecution further admitted that the forensic chemist who analyzed the seized the confiscated substance — which yielded positive for methylamphetamine hydrochloride content—did not have personal knowledge of the ultimate source of the drug.[4]

Appellant was brought to trial after having entered a negative plea.[5] The prosecution then proceeded to prove the charge against him through the lone testimony of police officer Jerry Velasco (Velasco). Velasco was the alleged leader of the raiding team that apprehended appellant on 18 May 2004 at the corner of G.Tuazon and Jhocson Streets in Sampaloc, Manila.[6]

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[1] THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[2] Presided by Judge Alejandro G. Bijasa.

[3] Information, records, p. 1.

[4] *Id*. at 17.

[5] *Id*. at 16.

[6] TSN, 8 September 2004, pp. 5-8.

The narrative woven by Velasco established the following facts: On 17 May 2004, Police Superintendent Marcelino Pedrozo (Pedrozo) of the MWPD organized a buy-bust team on the information of a confidential informant that the latter was able to place an order for half a "*bulto*" of *shabu* with appellant. Velasco was designated as the team leader and the poseur-buyer, with Police Officers Wilfredo Cinco, Edgardo Palabay, Roberto Benitez and one[7] confidential informant as members.[8] Pedrozo gave the team a marked 500-peso bill to be used as buy-bust money which was placed on top of a deck of boodle money. The team informed the Philippine Drug Enforcement Agency (PDEA) of the impending operation,[9] entered the same in the blotter[10] and proceeded to Bambang in G.Tuazon Street just before 12 a.m. of 18 May 2004 — the appointed time and date that the confidential informant and appellant had agreed to meet. The informant joined Velasco in his car, and they awaited the arrival of appellant at the corner of G.Tuazon and Jhocson Streets.[11] At around 12:30 a.m., appellant on board a car arrived at the scene and seeing the informant he approached the latter. The informant introduced Velasco to appellant and said that Velasco would like to buy one-half "*bulto*" of *shabu*. Velasco negotiated with appellant to lower the price but the latter refused. Velasco then insisted that he must first see the merchandise. Appellant went back to his car, took the item and brought it to Velasco. Velasco readily recognized the item as a plastic sachet containing a white crystalline substance. When appellant asked for payment, he seemed to have recognized Velasco's co-officer because he uttered the words, "*May pulis yata.*" At that point, he was arrested just as he was trying to get back to his car.[12]

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[7] The 17 May 2004 Pre-operation Report/Coordination Sheet submitted to the Philippine Drug Enforcement Agency indicates that the team had two confidential informants. Records, p. 10.

[8] TSN, 8 September 2004, pp. 6-9.

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

[10] *Id*. at 14.

[11] *Id*. at 14-15.

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

According to Velasco, he was the one who effected the arrest but it was Cinco who seized the plastic sachet from appellant. He further stated that immediately after the arrest, he and his team brought the seized item to the police headquarters and there, in his presence, Cinco marked the same with the initials "SOO." At the trial, he identified the plastic sachet as that seized from appellant as well as the marking made by Cinco on it. Furthermore, he admitted on cross-examination that there was no evidence custodian designated and that he could not remember if the seized item had been inventoried and photographed in the presence of the accused; that Cinco put the item in his pocket after the same was recovered and did not mark it on the spot and that the markings made on the buy-bust money had not been entered in the blotter.[13]

The chemistry report issued at the instance of Pedrozo and signed by Forensic Chemical Officer Maritess Mariano of the PNP Crime Laboratory revealed that the specimen supposedly seized from appellant yielded positive of methylamphetamine hydrochloride content.[14]

Taking the stand, appellant boldly asserted that he was merely framed up by the buy-bust team, and strongly denied having transacted the alleged sale of *shabu* with Velasco and the confidential informant. He claimed that he was taken by Velasco and his team not on 18 May 2004 but rather on 17 May 2004 at 7:00 p.m. along Santa Teresita Street, Sampaloc, Manila;[15] that he was there to see his girlfriend who was residing in that area; that when he was arrested by two men in civilian clothes, he was not committing any crime; that he asked them why they were arresting him but neither of them gave an answer and instead one of them grabbed him by his shoulder and ushered him inside a police car; that once inside the car, one of the men pulled out a gun with which he hit his neck, kicked him and uttered, "*Makulit ka ha, yuko!*"; that he asked them why they

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[13] *Id.* at 21-22, 31-39.

[14] Records, p. 7.

[15] TSN, 30 January 2006, pp. 5-6.

were doing that to him when in fact he merely told them to park their car properly on the street; that they cuffed his hands at the back and the driver, Velasco, asked if he could give them ₱200,000.00; that he answered he did not have that much money; that they drove the car around and told him that if he could not give them the money then he must just find for them someone who sells drugs in large-scale ("*Magturo ka ng nagbebenta ng droga, iyong malakihan ha!*"); that because he said he did not know anyone who was into selling drugs, he was taken to the U.N. Avenue police headquarters; that he was not detained at the headquarters but rather, he was brought to the second floor where the two arresting officers demanded ₱50,000.00 from him; that the demand was then reduced to ₱30,000.00 in exchange for the mitigation of his case.[16] Olivia Ismael, another defense witness who introduced herself as a friend of appellant's girlfriend and who admitted having witnessed appellant's arrest, corroborated the material points of appellant's testimony.[17]

In its 23 February 2006 Decision, the RTC found appellant guilty beyond reasonable doubt of the offense charged. He was sentenced to suffer the penalty of life imprisonment, and to pay a ₱500,000.00 fine without subsidiary imprisonment as well as the costs.[18]

Appellant interposed an appeal with the Court of Appeals in which he reiterated that the prosecution was unable to establish his guilt beyond reasonable doubt in view of the failure to establish the chain of custody of the illegal drugs and that it was likewise unable to establish the consummation of the alleged sale of drugs.[19] For its part, the People, through the Office of the Solicitor General (OSG), posited that the fact that all the essential elements of a consummated sale of dangerous drug had not been completely shown was immaterial because the charge involved a mere attempt

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[16] *Id.* at 7-13.

[17] TSN, 13 February 2006, pp. 3-7.

[18] Records, p. 80.

[19] CA *rollo*, pp. 38, 41.

or offer to sell which had been duly established by the prosecution.[20] It also maintained that the chain of custody of the seized *shabu* had been duly established because the requirements in taking custody of seized narcotics provided for in Dangerous Drugs Board Regulation No. 1, series of 2002[21] admit of liberal interpretation.[22]

In its 4 September 2007 Decision,[23] the Court of Appeals affirmed *in toto* the trial court's decision. Appellant's Notice of Appeal[24] was approved, and the records of the case were elevated to this Court. This Court's 24 March 2008 Resolution[25] allowed the parties to file their supplemental briefs, but only appellant complied; the OSG manifested instead that there was no need for its part to file a supplemental brief as the merits of the case had already been extensively discussed in its brief before the appellate court.[26]

The appeal has to be granted.

In criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[27] It is therefore of prime

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[20] *Id.* at 67-70.

[21] Issued by the Dangerous Drugs Board and approved on 22 November 2002.

[22] CA *rollo*, p. 67.

[23] In CA-G.R. CR.-H.C. No. 02158. The Decision, rendered by the 18th Division of the Court of Appeals, was penned by Associate Justice Jose L. Sabio, Jr. and was concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal; *id*. at 79-96.

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

[25] *Rollo*, pp. 23-24.

[26] *Id.* at 25-26.

[27] *People v. Simbahon*, G.R. No. 148668, 9 April 2003, 401 SCRA 94, 100; *People v. Laxa*, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 634.

importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt.[28] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[29]

Board Regulation No. 1, series of 2002 defines chain of custody as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[30] It would thus include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the same would admit how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[31]

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[28] *Mallillin v. People*, G.R. No. 172953, 30 April 2008; *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70; *People v. Simbahon*, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 100.

[29] AN ANALYTICAL APPROACH TO EVIDENCE, Ronald J. Allen, Richard B. Kuhns, by Little Brown & Co., U.S.A, 1989, p. 174.

[30] *Mallillin v. People*, G.R. No. 172953, 30 April 2008 citing *United States v. Howard-Arias*, 679 F.2d 363, 366 and *United States v. Ricco*, 52 F.3d 58.

[31] EVIDENCE OF LAW, Roger C. Park, David P. Leonard, Steven H. Goldberg, p. 507 (1998).

It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

The prosecution evidence in the case at bar, however, does not suffice to afford such assurance. Of all the people who came into direct contact with the sachet of *shabu* purportedly seized from appellant, only Velasco was able to observe the uniqueness thereof in court. Cinco, who, according to Velasco, took initial custody of the plastic sachet at the time of arrest and who allegedly marked the same with the initials "SOO" at the police station, was not even presented in court to directly observe the uniqueness of the specimen and, more importantly, to acknowledge the marking as his own. The same is true with respect to the laboratory personnel who could have but nevertheless failed to testify on the circumstances under which he received the specimen at the laboratory for analysis and testing, as well as on the conduct of the examination which was administered on the specimen and what he did with it at the time it was in his possession and custody. Aside from that, it was not reasonably explained why these same witnesses were not able to testify in court. While indeed the prosecution and the defense had stipulated on the qualification of the forensic chemist, dispensed with his testimony and admitted that said forensic chemist had no personal knowledge of the ultimate source of the drug submitted for examination, nevertheless, these stipulations and admission pertain only to a certain Elisa G. Reyes and not to Forensic Chemical Officer Maritess Mariano who, based on the chemistry report, was the one who examined the contents of the plastic sachet at the crime laboratory.

In view of these loopholes in the evidence adduced against appellant, it can be reasonably concluded that the prosecution was unable to establish the identity of the dangerous drug and in effect failed to obliterate the hypothesis of appellant's guiltlessness.

Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost

always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.[32] And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination,[33] substitution and exchange—[34] whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not.[35] It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical.[36] Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied — a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with.[37]

The Court certainly cannot reluctantly close its eyes to the possibility of substitution, alteration or contamination—whether intentional or unintentional — of narcotic substances at any of the links in the chain of custody thereof especially because practically such possibility is great where the item of real evidence is small and is similar in form to other substances to which people are familiar in their daily lives.[38] *Graham v. State*[39] in

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[32] *Mallillin v. People*, G.R. No. 172953, 30 April 2008.

[33] 29A AM JUR. 2d EVIDENCE §946.

[34] See *Graham v. State*, 255 N.E.2d, 652.

[35] *Mallillin v. People*, G.R. No. 172953, 30 April 2008.

[36] EVIDENCE LAW, Roger C. Park, David P. Leonard, Steven H. Goldberg, p. 507 (1998).

[37] *Mallillin v. People*, G.R. No. 172953, 30 April 2008.

[38] See *Graham v. State*, 255 N.E.2d, 652 and *Mallillin v. People*, G.R. No. 172953, 30 April 2008.

[39] 255 N.E.2d, 652.

fact acknowledged this danger. In that case, a substance later shown to be heroin was excluded from the prosecution evidence because prior to examination, it was handled by two police officers who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court in that case pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It thus declared that the state must be able to show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition.[40]

Reasonable safeguards are provided for in our drugs laws to protect the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21[41] of R.A. No. 9165 materially requires the apprehending

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[40] *Graham v. State*, 255 N.E2d 652, 655.

[41] **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;

(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

team having initial custody and control of the drugs to, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from

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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

whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 2[42] of its implementing rules[43] as well as in Section 2[44]

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(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.

[42] **SEC. 21.** x x x (a) 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; *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 the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[43] Approved on 30 August 2002 and became effective upon its publication in three (3) newspapers of general circulation and registration with the Office of the National Administrative Register.

[44] **Section 2. Seizure or confiscation of drugs or controlled chemicals or laboratory equipment.**

a. The apprehending team having initial custody and control of dangerous drugs or control chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physical inventory and photograph the same in the presence of:

(i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;

(ii) a representative from the media;

of the Dangerous Drugs Board Regulation No. 1, series of 2002.[45]

These guidelines, however, were not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the statutory requirements in handling the evidence. Velasco, the leader of the raiding team, himself admitted that as soon as appellant was arrested, Cinco had taken custody of the plastic sachet of *shabu*, placed it in his pocket and brought the same together with appellant to the police station. It was at the police station — and not at the place where the item was seized from appellant — where according to him (Velasco), Cinco had placed the initials "SOO" on the specimen. Velasco never even mentioned that the identifying mark on the specimen was placed in appellant's presence; he could not even remember whether or not the specimen had been properly inventoried and photographed at least in appellant's presence. Even more telling is the fact that, as elicited from Velasco himself during his cross-examination, no evidence custodian had been designated by the raiding team to safeguard the identity and integrity of the evidence supposedly seized from appellant.[46]

(iii) a representative from the department of Justice; and

(iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drug/equipment and who shall be given a copy thereof. *Provided* that the physical inventory and photograph shall be conducted at the place where the search was is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of a seizure without warrant; *provided* further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizure of and custody over said items.

b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team x x x.

[45] Adopted and approved on 22 November 2002 and became effective fifteen (15) days after its publication in two (2) newspapers of general circulation and registration with the Office of the National Administrative Register.

[46] TSN, 8 September 2004, pp. 30-32.

All these aforementioned flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court, militates against the prosecution's cause because it not only casts doubt on the identity of the *corpus delicti* but also tends to discredit, if not totally negate, the claim of regularity in the conduct of official police operation.

What we can fairly assume is that the Court of Appeals had overlooked the significance of these glaring details in the records of the case as it placed blind reliance right away on the credibility of Velasco's testimony and on the presumption of regularity and thereby it failed to properly account for the missing substantial links in the chain of custody of the evidence. In the same vein the liberality, suggested by the OSG relative to post-seizure custody of narcotics under paragraph 1 Section 2 of Board Regulation No. 1, can hardly be given merit precisely because the proviso in that section of the regulation requires that the integrity and the evidentiary value of the evidence be properly preserved by the apprehending officer/team in order that non-compliance with the post-seizure custody requirements be excused on justifiable grounds.[47]

It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[48] There is indeed merit in the

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[47] See note 44.

[48] JONES ON EVIDENCE, p. 94, citing Arkansas R. COM. V. CHICAGO R.L. & P.R. CO., 274 U.S. 597, 71 L Ed 1221, 1224.

contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. *People v. Dulay*[49] and *People v. Ganenas*[50] in fact both suggest that the presumption of regularity is disputed where there is deviation from the regular performance of duty. Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that—a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.[51]

It must be emphasized at this juncture that what can reasonably be presumed based on the records of this case is that Velasco is aware of his duties and responsibilities as an agent of the government in its anti-narcotics campaign. A member of the anti-narcotics division of the police since 1997,[52] Velasco can be reasonably presumed to be adept in and mindful of the proper procedure in apprehending drug offenders, securing and taking custody of the evidence obtained in police operations such as this one and preserving the integrity of the evidence by protecting the chain of custody thereof.[53] However, for reasons as obvious as intimated above, even this presumption is unworthy of credit.

All told, in view of the deviation by the buy-bust team from the mandated conduct of taking post-seizure custody of the dangerous drug in this case, there is no way to presume that the members thereof had performed their duties regularly. Even granting that we must blindly rely on the credibility of Velasco's

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[49] G.R. No. 150624, 24 February 2004, 423 SCRA 652, 660.

[50] G.R. No. 141400, 6 September 2001, 364 SCRA 582, 595.

[51] *Mallillin v. People*, G.R. No. 172953, 30 April 2008; *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318 citing *People v. Tan*, 382 SCRA 419 (2002).

[52] TSN, 8 September 2004, p. 39.

[53] See *People v. Pedronan*, G.R. No. 148668, 17 June 2003, 404 SCRA 183.

testimony, still, the prosecution evidence would fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt inasmuch as the evidence chain failed to solidly connect appellant with the seized drug in a way that would establish that the specimen is one and the same as that seized in the first place and offered in court as evidence. The Court cannot indulge in the presumption of regularity of official duty if only to obliterate the obvious infirmity of the evidence advanced to support appellant's conviction. In *Mallillin v. People*,[54] we categorically declared that the failure of the prosecution to offer in court the testimony of key witnesses for the basic purpose of establishing a sufficiently complete chain of custody of a specimen of *shabu* and the irregularity which characterized the handling of the evidence before the same was finally offered in court, materially conflict with every proposition as to the culpability of the accused. For the same plain but consequential reason, we will not hesitate to reverse the judgment of conviction in the present appeal.

One final word. In no uncertain terms must it be stressed that basic and elementary is the presupposition that the burden of proving the guilt of an accused rests on the prosecution which must draw strength from its own evidence and not from the weakness of the defense. The rule, in a constitutional system like ours, is invariable regardless of the reputation of the accused because the law presumes his innocence until the contrary is shown. *In dubio pro reo.* When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[55]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02158 affirming the judgment of conviction rendered by the Regional Trial Court of Manila, Branch 2, is *REVERSED* and *SET ASIDE*. Appellant Samuel Obmiranis *y* Oreta is *ACQUITTED* on reasonable doubt and is thus accordingly ordered released immediately from confinement, unless he is lawfully confined for another offense.

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[54] G.R. No. 172953, 30 April 2008.

[55] *Mallillin v. People,* G.R. No. 172953, 30 April 2008.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court his action hereon within five (5) days from receipt hereof.

SO ORDERED.

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

EN BANC

[A.M. No. P-05-2002. December 17, 2008]
(Formerly OCA I.P.I. No. 01-1245-P)

SANTIAGO B. BURGOS, *complainant, vs.* **VICKY A. BAES, Clerk of Court II, Municipal Circuit Trial Court in Cities, President Roxas-Pilar, President Roxas, Capiz,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHOULD OBSERVE STRICT OFFICIAL HOURS AT ALL TIMES. – In the words of the Constitution, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use of official working time, if only to recompense the government and, ultimately, the people, who shoulder the cost of maintaining the Judiciary. Time and again, this Court has reminded court officials and employees to observe strict official hours at all times. We have always stressed that punctuality is a virtue, and absenteeism and tardiness are impermissible.

APPEARANCES OF COUNSEL

Villa & Partners for complainant.
Alberto L. Deslate for respondent.

D E C I S I O N

***PER CURIAM*:**

In a letter dated March 7, 2001 addressed to then Acting Court Administrator Zenaida N. Elepaño,[1] Santiago B. Burgos (*complainant*), in his capacity as representative of the "Balikatan at Aksyon Para sa Bayan, Inc.," reported the "notorious habitual absenteeism" of Vicky A. Baes (*respondent*), Clerk of Court II, Municipal Circuit Trial Court in Cities (*MCTC*), President Roxas-Pilar, President Roxas, Capiz. Attached to the complainant's letter was a copy of his letter addressed to Judge Geomer C. Delfin of the same court, showing the respondent's absences and tardiness which he monitored during the months of September and October, 2001. The attachment also showed that there were times when the respondent stayed only for a few hours in her office.

The complainant also asked for the investigation of the financial collections of the court, alleging that the respondent had brought home the used and unused Official Receipts so that only temporary receipts were issued to those who transacted business with the court. The complainant further claimed that a ₱40,000.00 cash bond posted by an accused in a criminal case was not deposited in the Fiduciary Fund account of the court.

In another letter dated April 10, 2001, also addressed to then Acting Court Administrator Elepaño, the respondent's co-employees made similar accusations against her. In support of their allegations, they submitted a certification issued by Rolly A. Balani, the court's "custodian of logbook." The certification stated that aside from being absent most of the time, the respondent usually came to the office late and would stay only for one (1) or two (2) hours. They claimed that the respondent's habitual absences and tardiness had made her notoriously undesirable, and was already prejudicial to the service because the nature of her work required her presence in the court most of the time.[2]

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[1] Now retired Court Administrator.

[2] *Rollo*, p. 8.

The records also show that in a letter addressed to Executive Judge Julius L. Abela of the Regional Trial Court (*RTC*), Roxas City, the respondent's co-employees, together with municipal employees, municipal and *barangay* officials, litigants and other concerned residents of Roxas City, asked for her removal from office for "being an undesirable employee, undeservingly receiving Sixteen Thousand Four Hundred Sixty Four (₱16,464.00) Pesos a month without rendering due services required of her x x x."[3]

The respondent resigned from the service effective April 2, 2001. Her resignation, however, did not render the complaints against her moot and academic[4] pursuant to our ruling in *Gallo v. Cordero*[5] where we held that:

> This jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications. . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

Thus, on September 18, 2001, we directed the respondent to comment on the complaint. After several extensions, the respondent filed her comment on November 29, 2002. She alleged that the charges of tardiness and absenteeism against her were baseless, malicious and intended merely to harass her. She explained the complainant's action as the result of a grudge against her because he was an accused in a robbery case in

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

[4] *Concerned Trial Lawyers of Manila v. Veneracion,* A.M. No. RTJ-05-1920, April 26, 2006, 488 SCRA 285, citing *Office of the Court Administrator v. Fernandez,* 437 SCRA 81 (2004).

[5] A.M. No. MTJ-95-1035, June 21, 1995, 245 SCRA 219, citing *Zarate v. Judge Romanillos,* 242 SCRA 593 (1995).

their court. She belied the complainant's accusation that the ₱40,000.00 posted by an accused in a criminal case was not deposited in the Fiduciary Fund account of the court, claiming that the deposit was reflected in the court's Land Bank passbook.

The respondent also claimed that her co-employees' complaints were in retaliation for the series of memoranda she issued requiring them to explain why complainant was allowed to look into the court's Daily Time Record logbook and other restricted court records. She further averred that some of her co-employees were in fact interested in her position as clerk of court.

On recommendation of the Office of the Court Administrator (*OCA*), we referred the complaint to Executive Judge Charlito F. Fantilanan of the RTC, Branch 18, Roxas City for investigation, report and recommendation. On November 10, 2004, Executive Judge Fantilanan submitted his report recommending the dismissal of the complaint because the respondent's resignation had already been accepted[6] and because the complainant failed to overcome the presumption that the respondent regularly performed her duties.

In a resolution dated December 15, 2004, we referred Executive Judge Fantilanan's report to the OCA for further evaluation, report and recommendation.

On March 21, 2005, the OCA, through then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., submitted its evaluation report which states:

x x x x x x x x x

After a thorough study of the records, including the transcript of stenographic notes taken during the investigation hearing on the evidence of the parties, we cannot simply concur with Executive Judge Fantilanan's recommendation to dismiss the instant administrative case partly because of the resignation being proffered by the respondent. In *Judge Jose C. Reyes, Jr., etc. v. Ricardo Cristi, etc.*, the Court categorically states that "*the fact that the*

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[6] Per letter dated May 23, 2003 of then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., *rollo*, p. 63.

respondent had already resigned from his position does not render the complaint against him moot and academic. x x x The jurisdiction over the respondent has already attached at the time of the filing of the letter-complaint, and was not lost by the mere fact that he resigned from his office during the pendency of the case against him."

Moreover, the Notice of Acceptance of Resignation dated 23 May 2002 by the Office of the Court Administrator succinctly states that it was *subject to the usual clearance requirements.* To date, as per verification from HRM Officer III Marylyn Falculan of the OCA-OAS, respondent still had not secured her clearance, hence, she is not considered resigned. Resignation should not be used either as an escape or as an easy way out to evade administrative liability by a court personnel facing administrative sanction. To deprive this Court of authority to pronounce her innocence or guilt in the charges against her is undoubtedly fraught with injustice and pregnant with dreadful and dangerous implications.

The records reveal that no less than the respondent filed on 19 April 2001 with the OCA-Leave Division two (2) separate DTRs for the months of January and February 2001. In her own handwriting, respondent took the liberty of supplying entries of her time of arrival and departure in court. **The DTRs prove that she was unable to observe the eight (8) hours work requirement per day.** Interestingly, she did filed another set of DTRs covering the same months reflecting that she was on sick leave. This was the *gravaman* of her offense.

During clarificatory hearing conducted by the investigating Judge Fantilanan, respondent explained that she did file two different DTRs for said months because she was apprehensive of being declared absent without official leave (AWOL) since neither her Presiding Judge Delfin nor Executive Judge Gubaton signed her DTRs or Applications for Leave. This we find unavailing as **respondent's act itself constitutes GROSS DISHONESTY if not FALSIFICATION of ATTENDANCE RECORDS which is a public document.**

One need not emphasize that respondent had just filed her Application for Sick Leave for the period 28 October to 29 December 2000 on 02 January 2001, duly approved by Presiding Judge Geomer Delfin. If indeed she still needs to recuperate from her illness and go on extended sick leave, the matter should have been communicated

to her judge or to her officemates. Nothing of this sort happened as she started to assume her work although intermittently. If at all, her filing of another set of DTRs for the months of January and February 2001 was a mere ploy to cover up her inadequacy to meet the demands of her job. Noteworthy at this instance is the fact that the time-in and out voluntarily supplied by the respondent on subject DTRs more or less tallies with the records of arrival and departure certified by Mr. Rolly Balani, custodian of the court's logbook, who had been tasked by their judge to monitor such. Said authority when impugned by the respondent had been put to rest by the letter of Judge Delfin dated 08 October 2001 addressed to OCA Administrator Justice Presbitero J. Velasco, Jr., which states, *to wit*:

> *But when her attention was called and there was already a mounting clamor about her habitual absenteeism, I personally directed her co-worker to record her arrival and departure in the log book and in the calendar of the court. True enough that her other co-employees in court were able to record her attendance as evidenced by the record they attached in their complaint filed in your office dated 10 April 2001.*

Respondent even included in her DTR for February 20-21, 2001 that she attended a seminar in Iloilo. Likewise, she was present in court on 15 March 2001 as evidenced by the Transcript of Stenographer Notes taken during the Staff Conference of the 1st MCTC President Roxas-Pilar, called by Presiding Judge Delfin. Incidentally, nothing on record shows that respondent submitted her DTR for March 2001 but she did file an application for sick leave for the period March 20-30, 2001. Foregoing considered, **respondent's act of filing an application for sick leave for the month of January to February 2001 was highly irregular as this does not reflect her true attendance in court. Obviously, she cannot be sick as attested by the medical certificates attached on her application when in fact she reported for work mostly at her own pleasurable time.**

To date, all the applications for sick leave filed by the respondent for the months of January-March 2001 remained unapproved. What has been approved by Executive Judge Salvador S. Gubaton was the Leave Application for the period "*April 2, 2001 up to approval of resignation,*" which was done with reservation

as indicated in her Comment dated 31 August 2001, in answer to Mrs. Molo's Letter dated 21 August 2001.

Under Sec. 63, Rule XVI, of the Omnibus Civil Service Rules and Regulations:

> *Sec. 63 — Effect of absences without approved leave – An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed at his address appearing on his 201 files, or at his last known written address, of his separation from the service, not later than five (5) days from its effectivity.*

Still, under **Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission**, an officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year. Such a violation renders the erring employee administratively liable for the grave offense of Frequent Unauthorized Absences or Tardiness in Reporting for Duty and for Gross Neglect of Duty under Section 22 (q) and (a), respectively, of the Omnibus Rules Implementing Book V of Executive Order No. 292.

Along the same vein, Section II of Administrative Circular 2-99, entitled "*Strict Observance of Working Hours and Disciplinary Action foar Absenteeism and Tardiness*" lays down the degree of stringency which must be adopted in the determination of the proper sanctions to be imposed, *viz*:

> 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. (emphasis supplied)

Anent the charge of unaccounted cash bail bond amounting to Forty Thousand Pesos (₱40,000.00), respondent presented during the course of investigation **the court's fiduciary account with**

the Land Bank of the Philippines reflecting that she did deposit the amount in two (2) equal installments on 06 April 2000 and 29 September 2000. However, said deposit is not conclusive as referring to the questioned cash bond since respondent had not been subjected to any financial audit as of date. Explicit under the 2002 Revised Manual for Clerks of Court that "*all collections from* ***bail bonds,*** *x x x shall be* ***deposited immediately*** *by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank, the Land Bank of the Philippines.*"

Respondent testified that she did not deposit the whole amount of the questioned cash bond so that it would form part of the cash on hand answerable for court litigant's withdrawals from time to time, and this practice was allegedly ordered verbally by her presiding judge. It is significant to note was the testimony of respondent as reflected in the TSN dated 10 August 2004, which reads:

x x x x x x x x x

"Atty. Bellones: My next question is, there are times when since you answer that sometimes it takes several days for you to remit the amount with the bank because the depository bank was quite far. Madam witness you would agree with me that there are times that there is huge amount of cash kept within the premises of the Court?

A. No. It is personally…When it is for deposit and be given to me, I personally since the office has no vault there's no safety in the office that is why there was a time when our office was ransacked, our petty cash was taken by an outsider.

Q. So, in short, Madam Witness there were times when you bring it with you?

A. Yes Sir. Because personally I am liable to whatever happened to the money."

It can be inferred that respondent had to bring with her the amount of Twenty Thousand Pesos (₱20,000.00) every time she goes in or out of court in anticipation of future withdrawals of bail bonds for

the period 06 April 2001 to 29 September 2001. As she previously claimed, she had difficulty in arriving to court because of the considerable distance she had to travel from her residence, hence exposing herself to more danger by having on her possession money that she should have been deposited in the first place. More importantly, the Manual of Clerks of Court also provides the procedure to be followed in case of withdrawal from the fiduciary account. Ergo, the shortcut resorted to by the respondent in handling the court's fiduciary account is uncalled for under the premises.

On the charge that respondent had on her possession at home the court's used and unused Official Receipts as well as other court documents, records also show that her attention was repeatedly called on this matter by her presiding judge. Though there is an undated document tending to show that respondent turned over same court documents to Process Server Rolly Balani, it does not discount the fact that in a letter dated March 20 and 26, 2001, Presiding Judge Delfin noted that the court had failed to issue receipts for filing, subscription and clearance fees starting January 2001, hence she was ordered to immediately return said ORs as well as the court's fiduciary passbook and other documents. Additionally, in another letter dated 08 October 2001, Judge Delfin noted that from the time of respondent's filing of resignation, the documents in question have not been turned-over to the court. Hence, on 24 October 2001, Felix Relano, OIC/Clerk of Court, had to execute an affidavit in order that a replacement passbook on the court's fiduciary account would be issued by the Land Bank of the Philippines.

Even respondent's claim that she submitted these documents for possible audit by COA State Auditor Rodulfo Arce does not justify her indifference to the court orders. When Mr. Arce testified during the investigation, he acknowledged that respondent had submitted some records to his office sometime in January 2001 but also pulled out the same in March 2001. The supposed audit could not be started as they lack other necessary documents that respondent has to submit.

Verily, **we find respondent to be arrogantly indifferent to the demands of her employment in a manner that is notoriously undesirable and prejudicial to public service**. We have repeatedly held that the conduct and behavior of a person connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His or her conduct should at all times be

characterized by propriety and decorum and be beyond suspicion. The Court cannot countenance any act or omission of any person involved in the administration of justice which violates the norm of public accountability and undermines or tends to undermine the faith of the people in the Judiciary.

The OCA recommended that: (1) the case be redocketed as a regular administrative case and that respondent be found guilty of absence without official leave, aggravated by gross misconduct and conduct prejudicial to the best interest of justice; and (2) that the respondent be dismissed from the service with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to reemployment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations.

The Court fully agrees with the OCA Report and finds that the respondent failed to live up to the standards of honesty and integrity required in the public service. In the words of the Constitution, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use of official working time, if only to recompense the government and, ultimately, the people, who shoulder the cost of maintaining the Judiciary. Time and again, this Court has reminded court officials and employees to observe strict official hours at all times. We have always stressed that punctuality is a virtue, and absenteeism and tardiness are impermissible.[7] We take this occasion to issue another reminder of this aspect of the duty we owe the government and the people.

As recommended, we find the respondent guilty of grave misconduct which would have warranted her dismissal from the service had she not resigned during the pendency of this case. In lieu of the dismissal that we can no longer impose, we are imposing on the respondent the penalty we can still effectively mete out — the forfeiture of her retirement benefits except her

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[7] *A Very Concerned Employee and Citizen v. De Mateo,* A.M. No. P-05-2100, December 27, 2007, 541 SCRA 362, citing *Re: Administrative Case for Dishonesty against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Clerk of Court,* 464 SCRA 1 (2005).

accrued leave credits, if any, and her disqualification from further employment opportunities in the public service.[8]

WHEREFORE, the Court finds respondent Vicky A. Baes, former Clerk of Court, MCTC, President Roxas-Pilar, President Roxas, Capiz, *GUILTY* of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In lieu of the *DISMISSAL* that this offense carries but which we can no longer effectively impose because of her earlier resignation, we hereby *ORDER* the *FORFEITURE* of whatever benefits are still due her from the government, except for the accrued leave credits, if any, that she had earned. The respondent is further **BARRED** from reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.*, concur.

Corona, J., on leave.

Velasco, Jr., J., no part due to prior action in OCA.

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[8] *Paclibar v. Pamposa, etc.*, A.M. No. P-03-1737, November 16, 2006, 507 SCRA 30; *Zarate v. Judge Romanillos, supra* note 5; *Re: Non-disclosure Before the Judicial and Bar Council of the Administrative Case Filed Against Judge Jaime V. Quitain*, JBC No. 013, August 22, 2007, 530 SCRA 729.

FIRST DIVISION

[A.M. No. RTJ-03-1762. December 17, 2008]
[formerly OCA I.P.I. No. 02-1422-RTJ]

SERGIO & GRACELDA N. ANDRES, *complainants, vs.* **JUDGE JOSE S. MAJADUCON, Regional Trial Court, Branch 23, ELMER D. LASTIMOSA, Clerk of Court and Ex-Officio Provincial Sheriff, RTC-OCC, and NASIL S. PALATI, Sheriff IV, Regional Trial Court, Branch 23, General Santos City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; THE EXECUTION OF A FINAL JUDGMENT IS A MATTER OF RIGHT ON THE PART OF THE PREVAILING PARTY, AND MANDATORY AND MINISTERIAL ON THE PART OF THE COURT OR TRIBUNAL ISSUING THE JUDGMENT.— [T]he judgment in Civil Case Nos. 1291 and 4647 had already attained finality. The special order of demolition was issued by respondent judge so that the final judgment could be fully implemented and executed, in accordance with the principle that the execution of a final judgment is a matter of right on the part of the prevailing party, and mandatory and ministerial on the part of the court or tribunal issuing the judgment. To be sure, it is essential to the effective administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict.

2. ID.; SUPREME COURT CIRCULAR NO. 7; RAFFLING OF CASES; SIGNIFICANCE.— RAFFLING OF CASES All cases filed with the Court in stations or groupings 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 branches in the particular station or grouping shall be included in the raffle. x x x The Court, enunciating

the importance of the raffling of cases, held in the case of *Ang Kek Chen v. Bello:* The procedure for the raffling of cases under Supreme Court Circular No. 7 is of vital importance to the administration of justice because it is intended to ensure the impartial adjudication of cases. By raffling the cases, public suspicion regarding the assignment of cases to predetermined judges is obviated. A violation or disregard of the Court's circular on how the raffle of cases should be conducted is not to be countenanced.

3. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; CONTEMPT; POWER TO PUNISH FOR CONTEMPT; INTENDED AS A SAFEGUARD NOT FOR THE JUDGES AS PERSONS BUT FOR THE FUNCTIONS THAT THEY EXERCISE.— Contempt of court is a defiance of the authority and dignity of the court or a judge acting judicially, or such conduct as tends to bring the authority of the court and the administration of justice into disrepute or disrespect. x x x While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold due administration of justice, still, judges must be slow to punish for direct contempt. This drastic power must be used judiciously and sparingly. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. The salutary rule is that the power to punish for contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment. The courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.

4. JUDICIAL ETHICS; JUDGES; SHOULD EXHIBIT THAT HALLMARK JUDICIAL TEMPERAMENT OF UTMOST SOBRIETY AND SELF-RESTRAINT.— It has time and again been stressed that besides the basic equipment of possessing the requisite learning in the law, a magistrate must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge. A judge should be the last person to be perceived as a petty tyrant holding imperious sway over his domain. Indeed, Section 6 of Canon 6 of the New Code of Judicial Conduct states that: "Judges shall maintain order and decorum in all proceedings

before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity."

5. ID.; ID.; SHOULD NOT ONLY BE IMPARTIAL BUT SHOULD ALSO APPEAR IMPARTIAL.— Section 2 of Canon 3 of the New Code of Judicial Conduct specifically provides that "*judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.*" Section 5 of the same Canon further states that *"judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where (b) the judge previously served as lawyer in the matter in controversy."* x x x A judge should strive to be at all times wholly free, disinterested, impartial and independent. He has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to its integrity. Well-known is the judicial norm that judges should not only be impartial but should also appear impartial. A critical component of due process is a hearing before an impartial and disinterested tribunal, for all the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge. We take this occasion once more to impress upon a trial judge that he must at all times maintain and preserve the trust and faith of litigants in the court's impartiality. When he exhibits actions that give rise, fairly or unfairly, to perceptions of bias, such faith and confidence are eroded, and he has no choice but to inhibit himself voluntarily. It is basic that a judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce the slightest doubt on his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. The better course for the judge is to disqualify himself.

6. ID.; ID.; GROSS IGNORANCE OF THE LAW; WHEN ESTABLISHED.— For liability to attach for ignorance of the law, the assailed order, decision or actuation must not only be contrary to existing law and jurisprudence but, most importantly, it must also be established that he was moved by bad faith, fraud, dishonesty, and corruption. Gross ignorance of the law is a serious accusation, and a person who accuses a judge of this very serious offense must be sure of the grounds for the accusation.

7. REMEDIAL LAW; RULES OF COURT; LEGAL ETHICS; CHARGES AGAINST JUDGES; VIOLATION OF SUPREME COURT CIRCULAR NO. 7, CLASSIFIED AS A LESS SERIOUS CHARGE; SANCTION.— The violation of Supreme Court Circular No. 7 by respondent judge is classified as a less serious charge under Section 9 of Rule 140 of the Rules of Court. Section 11 (B) of the same Rule 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) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

8. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; WHEN AN ORDER IS PLACED IN THE HANDS OF A SHERIFF, IT IS HIS MINISTERIAL DUTY TO PROCEED WITH REASONABLE PROMPTNESS TO EXECUTE IT IN ACCORDANCE WITH ITS MANDATE.— It is well-settled that when an order is placed in the hands of a sheriff, it is his ministerial duty to proceed with reasonable promptness to execute it in accordance with its mandate. The primary duty of sheriffs is to execute judgments and orders of the court to which they belong. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law. It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must act with considerable dispatch so as not to unduly delay the administration of justice, otherwise, the decisions, orders, or other processes of the courts of justice would be futile.

APPEARANCES OF COUNSEL

Ferdinand F. Andres and *Gracelda N. Andres* for complainants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.:*

This administrative case arose from the complaint-affidavit[1] dated February 21, 2002 of Sergio N. Andres, Jr. and Gracelda N. Andres charging respondents **Judge Jose S. Majaducon**, Executive Judge, Regional Trial Court (RTC), General Santos City, and Presiding Judge, Branch 23, with violation of Supreme Court Circular No. 7, Gross Ignorance of the Law and Grave Misconduct, and both **Elmer D. Lastimosa**, Ex-Officio Provincial Sheriff of South Cotabato, and **Nasil S. Palati**, Sheriff IV, Regional Trial Court, Branch 23, General Santos City, with Abuse of Authority, Ignorance of the Law and Grave Misconduct.

The complaint stemmed from the Special Order of Demolition[2] issued by Judge Majaducon on August 22, 2001 in connection with the consolidated Civil Case Nos. 1291[3] and 4647,[4] an action for declaration of nullity of documents and recovery of possession of real property with writ of preliminary mandatory injunction and damages. The said order directed the provincial sheriff of General Santos City to demolish the improvements erected by the heirs of John Sycip and Yard Urban Homeowners Association on the land belonging to spouses Melencio Yu and Talinanap Matualaga. Pursuant to the Order of Demolition, a Notice to Vacate[5] dated September 12, 2001 was issued by Sheriff Palati

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[1] *Rollo*, pp. 1-8.

[2] *Id.*, at 56-57.

[3] Entitled, *Melencio Yu and Talinanap Matualaga v. Heirs of John Sycip, represented by Natividad Sycip*.

[4] Entitled, *Yard Urban Homeowners Association, Inc., et al. v. Melencio Yu, et al.*

[5] *Rollo*, p. 58.

and noted by Provincial Sheriff Lastimosa. The said notice was addressed to the heirs of John Sycip, all members of Yard Urban Homeowners Association, and "*all adverse claimants and actual occupants"* of Lot No. 2, Psu-135740, the land subject of Civil Case Nos. 1291 and 4647.

To forestall the demolition of their houses, complainants, who claimed an interest over Lot No. 2, Psu-135740, filed a Special Appearance with Urgent Ex-Parte Manifestation[6] informing the court of the pending protest between them and the heirs of Melencio Yu and Talinanap Matualaga before the Department of Environment and Natural Resources (DENR), docketed as RED Claim No. 3735.[7] In the Ex-Parte Manifestation, complainants alleged that they and their predecessor-in-interest Concepcion Non Andres introduced improvements and authorized the construction of several improvements on Lot No. 2, Psu-135740. They also averred that they are not bound by the judgment rendered in Civil Case Nos. 1291 and 4647 because neither they nor their predecessor-in-interest were impleaded as parties therein. They prayed that the provincial sheriff or any of his deputies be enjoined from implementing the special order of demolition on the improvements they made. They also wrote a letter[8] addressed to respondents Lastimosa and Palati enjoining them from executing the order of demolition under pain of administrative sanction.

On February 6, 2002, notwithstanding complainants' manifestation and letter, Lastimosa and Palati proceeded with the demolition of the improvements erected by the complainants and their predecessor-in-interest.

Thus, on February 18, 2002, complainants instituted, with the RTC of General Santos City, *Civil Case No. 7066,* an

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[6] *Id.*, at 36-37.

[7] Entitled, *Concepcion Non Andres (dec.) now her Heirs, represented by Gracelda N. Andres v. Melencio Yu (dec.), now his Heirs, represented by Virgilio Yu.*

[8] *Rollo,* p. 38.

action for Specific Performance, Reconveyance and Damages against the heirs of Melencio Yu and impleaded Judge Majaducon, Lastimosa and Palati as co-defendants. The complaint alleged that complainants' title over Lot No. 2, Psu-135740 was valid, that they had been occupying the property since 1957 and that the reckless and arbitrary demolition of their improvements had unlawfully disturbed their peaceful occupation of the property.[9] Complainants also filed an Urgent Motion for Special Raffle of said Civil Case No. 7066.

In an Order[10] dated February 18, 2002, Judge Majaducon, acting as the Executive Judge of RTC, General Santos City, denied the Urgent Motion for Special Raffle and dismissed outright Civil Case No. 7066. On the same day, respondent judge issued another Order[11] declaring complainants in direct contempt of court for allegedly filing a complaint based on a quitclaim that had already been pronounced null and void by the Supreme Court. Accordingly, complainants were ordered to pay a fine of ₱2,000.00 and to suffer the penalty of imprisonment for ten (10) days.

This prompted complainants to file the instant administrative complaint. They averred that the actions of herein respondents constitute bad faith, malicious motive, serious partiality, grave misconduct and gross ignorance of the law. They also alleged that prior to his appointment in the judiciary, Judge Majaducon was the former counsel of Melencio Yu and his mother Dominga Pinagawang.

In his Comment[12] dated April 16, 2002, respondent judge vehemently denied the accusations hurled against him. He explained that he issued the special order of demolition in the consolidated Civil Case Nos. 1291 and 4647 after a decision[13]

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[9] *Id.*, at 9-21.

[10] *Id.*, at 48.

[11] *Id.*, at 40-43.

[12] *Id.*, at 81-88.

[13] In G.R. No. 76487, entitled, *Heirs of John Sycip v. Court of Appeals*, November 9, 1990. *Id.*, at 44-47.

was rendered and a resolution[14] was issued by the Supreme Court affirming the judgments of the RTC and the Court of Appeals (CA) declaring spouses Melencio Uy and Talinanap Matualaga as the rightful owners of Lot No. 2, Psu-135740 and ordering all occupants to vacate the premises. This was also the reason why he ordered the outright dismissal of Civil Case No. 7066 filed by herein complainants. He believed that complainants had no cause of action because the courts had already decided that the quitclaim upon which complainants based their action was null and void. Thus, to entertain the complaint would be just a waste of time on the part of the court. Anent the contempt order, he maintained that the same was justified because complainants had instituted an unfounded suit based on a falsified document, thereby demonstrating an obvious defiance and disrespect of the authority and dignity of the court.

As to the charge of partiality, respondent judge denied being the former counsel of Melencio Yu's mother, Dominga Pinagawang. He explained that his real client was Cesar Bañas who requested him to write a letter demanding the squatters to vacate the lot owned by Dominga. He asserted that after writing the letter, another counsel took over the case.

Respondents Lastimosa and Palati filed their own Comment[15] on April 9, 2002 and averred that they faithfully observed the correct procedure in the implementation of the order of demolition, including the twin requirements of notice and hearing. According to them, they were extra careful in implementing the same especially because it was, by far, the biggest demolition undertaken by their office as it involved a 12-hectare property and about 1,500 persons. It also generated interest among the media, thus they made sure that they consulted with respondent judge all issues and questions relative to its implementation.

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[14] In G.R. No. 138132, entitled, *Yard Urban Homeowners Association, Inc. et al. v. Melencio Yu, et al.*, July 19, 1999. *Id.*, at 141.

[15] *Id.*, at 53-55.

In the Agenda Report[16] dated December 12, 2002, the Office of the Court Administrator (OCA) recommended that respondent judge be fined in the amount of ₱10,000.00 for violation of the rules governing the raffle of cases, and that the administrative case against him be redocketed as a regular administrative matter. The OCA, however, found that respondents Lastimosa and Palati did not abuse their authority in the implementation of the order of demolition and accordingly recommended the dismissal of the complaint against them.

In the Resolution dated March 5, 2003, the Court required the parties to manifest their willingness to submit the case for resolution based on the pleadings filed.[17] Pursuant to respondents' manifestation,[18] they filed their memorandum with additional exhibits on April 22, 2003.[19] Complainants, on the other hand, manifested that they would no longer file a memorandum and that they were submitting the case for resolution.

Complainants assailed the respondent judge's issuance of a special order of dismissal in connection with *Civil Case Nos. 1291* and *4647* despite their pending protest before the DENR. To complainants, the issuance of said order of demolition constituted gross ignorance of the law.

We are not persuaded. The evidence on hand shows that respondent judge issued the special order of demolition only after carefully determining that there was no more hindrance to issue the same. For one, the trial court, in Civil Case Nos. 1291 and 4647, had already adjudged that the land in question belonged to spouses Yu and Matualaga and even nullified the quitclaim and all documents of conveyance of sale in favor of complainants' predecessor-in-interest.[20] In fact, the records of

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[16] *Id.*, at 172-177.

[17] *Id.*, at 178.

[18] *Id.*, at 180,183-185.

[19] *Id.*, at 202-204.

[20] *Id.*, at 89-96.

the case disclosed that the decision of the trial court was affirmed by the CA in CA-G.R. No. 69000[21] and CA-G.R. CV No. 54003[22] and ultimately by this Court *via* its decision dated November 9, 1990 in G.R. No. 76487[23] and resolution dated July 19, 1999 in G.R. No. 138132.[24]

It is thus beyond dispute that the judgment in Civil Case Nos. 1291 and 4647 had already attained finality. The special order of demolition was issued by respondent judge so that the final judgment could be fully implemented and executed, in accordance with the principle that the execution of a final judgment is a matter of right on the part of the prevailing party, and mandatory and ministerial on the part of the court or tribunal issuing the judgment.[25] To be sure, it is essential to the effective administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict.[26]

However, respondent judge abused his authority in dealing with Civil Case No. 7066 which cast serious doubt as to his impartiality. Respondent judge's outright dismissal of *Civil Case No. 7066* entitled *"Heirs of Concepcion Non Andres, namely Sergio, Sergio Jr., and Sofronio and Gracelda, all surnamed Andres v. Heirs of Melencio Yu and Talinanap Matualaga, namely Eduardo, Leonora, Virgilio, Vilma, Cynthia, Imelda and Nancy, all surnamed Yu, and represented by Virgilio Yu and Cynthia Yu Abo, Atty. Elmer Lastimosa, in his capacity as Ex-Officio Provincial Sheriff of South Cotobato, Mr. Nasil*

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[21] *Id.*, at 97-103.

[22] *Id.*, at 133-140.

[23] See Note 13.

[24] See Note 14.

[25] *Suyat v. Gonzales-Tesoro*, G.R. No. 162277, December 7, 2005, 476 SCRA 615, 623.

[26] *Honrado v. Court of Appeals*, G.R. No. 166333, November 25, 2005, 476 SCRA 280, 291.

Palati, in his capacity as Deputy Sheriff, Regional Trial Court, Branch 23, General Santos City, and Hon. Jose S. Majaducon, Presiding Judge of the Regional Trial Court, Branch 23, General Santos City" was irregular. As correctly found by the OCA, respondent judge completely ignored the procedure for the raffling of cases mandated by Supreme Court Circular No. 7 dated September 23, 1974, which we reproduce hereunder:

I. RAFFLING OF CASES

All cases filed with the Court in stations or groupings 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 branches in the particular station or grouping shall be included in the raffle. x x x

Clearly, respondent judge violated the explicit mandate of the Court when he took cognizance of Civil Case No. 7066 wherein he was named as one of two defendants and instantly dismissed it without first conducting the requisite raffle. The Court, enunciating the importance of the raffling of cases, held in the case of *Ang Kek Chen v. Bello*[27]:

The procedure for the raffling of cases under Supreme Court Circular No. 7 is of vital importance to the administration of justice because it is intended to ensure the impartial adjudication of cases. By raffling the cases, public suspicion regarding the assignment of cases to predetermined judges is obviated. A violation or disregard of the Court's circular on how the raffle of cases should be conducted is not to be countenanced.

Respondent judge cannot excuse himself from his duty as Executive Judge by dispensing with the raffle of the case and dismissing it outright on the pretext that it would be just a waste of time on his part to raffle and entertain the case. As Executive Judge, he ought to know that raffling of cases is his personal

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[27] Nos. L-76344-46, June 30, 1988, 163 SCRA 358.

duty and responsibility. He is expected to keep abreast and be conversant with Supreme Court rules and circulars that affect the conduct of cases before him and strictly comply therewith at all times. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law. Judges should therefore administer their office with due regard to the integrity of the system of law itself, remembering that they are not depositories of arbitrary power, but judges under the sanction of law.[28]

By declaring complainants guilty of direct contempt of court, sentencing them to pay a fine of ₱2,000.00 and to suffer the penalty of imprisonment for ten (10) days, respondent judge exhibited his bias against herein complainants.

Contempt of court is a defiance of the authority and dignity of the court or a judge acting judicially, or such conduct as tends to bring the authority of the court and the administration of justice into disrepute or disrespect.[29] Here, respondent judge cited complainants in direct contempt of court for filing a complaint (Civil Case No. 7066) based on a deed of quitclaim that had already been declared null and void, instead of having the said case, wherein he was one of the defendants, raffled to the court which could properly act on the case. While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold due administration of justice, still, judges must be slow to punish for direct contempt. This drastic power must be used judiciously and sparingly. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties.[30]

The salutary rule is that the power to punish for contempt must be exercised on the preservative, not vindictive principle,

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[28] *Hilario v. Ocampo III*, A.M. No. MTJ-00-1305, December 3, 2001, 371 SCRA 260, 270-271.

[29] *Abad v. Somera*, G.R. No. 82216, July 2, 1990, 187 SCRA 75, 84-85.

[30] *Sison v. Caoibes, Jr.*, A.M. No. RTJ-03-1771, May 27, 2004, 429 SCRA 258, 265.

and on the corrective and not retaliatory idea of punishment. The courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[31]

It has time and again been stressed that besides the basic equipment of possessing the requisite learning in the law, a magistrate must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge. A judge should be the last person to be perceived as a petty tyrant holding imperious sway over his domain.[32]

Indeed, Section 6 of Canon 6 of the New Code of Judicial Conduct states that:

> Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity.

Respondent judge's act of unceremoniously citing complainants in direct contempt is a clear evidence of his unjustified use of the authority vested upon him by law.

Respondent judge also took cognizance of Civil Case No. 7066 despite the fact that prior to his appointment as judge, respondent served as counsel for Melencio Yu and his mother, Dominga Pinagawang.

Respondent's explanation that it was Cesar Bañas who was his client and not Melencio and Dominga was belied by the demand letter[33] dated June 20, 1980, which was signed by him.

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[31] *Cañas v. Castigador*, G.R. No.139844, December 15, 2000, 348 SCRA 425, 433.

[32] *Rodriguez v. Bonifacio*, A.M. No. RTJ-99-1510, November 6, 2000, 344 SCRA 519, 535.

[33] *Rollo*, p. 33.

Respondent judge clearly acted as counsel not only for Cesar Bañas but for Melencio and Dominga as well. Section 2 of Canon 3 of the New Code of Judicial Conduct specifically provides that "*judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.*" Section 5 of the same Canon further states that "*judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where (b) the judge previously served as lawyer in the matter in controversy.*"

Respondent judge violated the above canon when he dispensed with the raffle and took cognizance of Civil Case No. 7066 as well as ordered its outright dismissal and cited the complainants in contempt of court. He thus created the impression that he intended to favor his former clients, Melencio and Dominga. His actuations gave ground for the parties to doubt his impartiality and objectivity. A judge should strive to be at all times wholly free, disinterested, impartial and independent. He has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to its integrity.[34] Well-known is the judicial norm that judges should not only be impartial but should also appear impartial. A critical component of due process is a hearing before an impartial and disinterested tribunal, for all the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.[35]

We take this occasion once more to impress upon a trial judge that he must at all times maintain and preserve the trust

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[34] *Garcia v.Dela Peña* , A.M. No. MTJ-92-687, February 9, 1994, 229 SCRA 766, 774.

[35] *Webb v. People*, G.R. No. 127262, July 24, 1997, 276 SCRA 243, 252.

and faith of litigants in the court's impartiality. When he exhibits actions that give rise, fairly or unfairly, to perceptions of bias, such faith and confidence are eroded, and he has no choice but to inhibit himself voluntarily. It is basic that a judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce the slightest doubt on his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. The better course for the judge is to disqualify himself.[36]

Respondent judge was a party defendant in Civil Case No. 7066 which was enough reason not to act on the same and just leave the matter to the Vice-Executive Judge. His reluctance to let go of the case all the more induced doubts and suspicions as to his honest actuations, probity and objectivity. Evidently, respondent judge violated the clear injunction embodied in the aforecited Canon of the Code of Judicial Conduct.

Be that as it may, we rule that there is no merit in complainants' charge of gross ignorance of the law leveled against respondent judge. For liability to attach for ignorance of the law, the assailed order, decision or actuation must not only be contrary to existing law and jurisprudence but, most importantly, it must also be established that he was moved by bad faith, fraud, dishonesty, and corruption.[37] Gross ignorance of the law is a serious accusation, and a person who accuses a judge of this very serious offense must be sure of the grounds for the accusation.

The violation of Supreme Court Circular No. 7 by respondent judge is classified as a less serious charge under Section 9 of Rule 140 of the Rules of Court. Section 11(B) of the same Rule provides the following sanctions for less serious offenses:

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[36] *Orola v. Alovera*, G.R. No. 111074, July 14, 2000, 335 SCRA 609, 619.

[37] *Guerrero v. Villamor*, A.M. No. RTJ-90-483, September 25, 1998, 296 SCRA 88, 98.

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) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Finally, as regards the charge against Ex-Officio Provincial Sheriff Elmer Lastimosa and Sheriff IV Palati, complainants maintain that they abused their authority when they enforced the order of demolition against complainants even though they were not impleaded as parties in Civil Case Nos. 1291 and 4647 where the order of demolition was issued.

The dispositive portion of the order of demolition issued by respondent judge reads:

NOW THEREFORE, we command you to demolish the improvements erected by the defendants HEIRS OF JOHN SYCIP (namely: NATIVIDAD D. SYCIP, JOSE SYCIP, JR., ALFONSO SYCIP II, ROSE MARIE SYCIP, JAMES SYCIP & GRACE SYCIP), Represented by NATIVIDAD D. SYCIP, in Civil Case No. 1291 and the plaintiffs YARD URBAN HOMEOWNERS ASSOCIATION, INC. *ET AL*. in Civil Case No. 4647, on that portion of land belonging to plaintiffs in Civil Case No. 1291 and defendants in Civil Case No. 4647, MELENCIO YU and TALINANAP MATUALAGA, covered by Original Certificate of Title No. (V-14496) (P-2331) P-523, located in Apopong, General Santos City.

This Special Order of Demolition shall be returned by you to this Court within ten (10) days from the date of receipt hereof, together with your proceedings indorsed hereon.[38]

Clearly, respondent judge neither ordered the eviction of any other person occupying the property of spouses Yu and Matualaga other than the parties in Civil Case Nos. 1291 and 4647, nor directed the Ex-Officio Sheriff to demolish the houses or structures

[38] *Rollo*, p. 57.

of any person other than the said parties. However, the notice to vacate issued by Palati and noted by Lastimosa was addressed not just to the parties but to "all adverse claimants and actual occupants of the land subject of the case." It directed that the houses and improvements of the parties, as well as those of adverse claimants including complainants who were not parties in Civil Case Nos. 1291 and 4647, would be demolished.

Worth quoting here is the decision of the CA in CA-G.R. CV No. 54003, which decided the appeal of the decision in Civil Case No. 4647, *viz*:

> Finally, the appellants' assertion that they are not bound by the decision in Civil Case No. 1291 because they are not parties therein and that the appellees should first institute an action for ejectment in order to acquire possession of the property is without merit. The appellants' failure to establish a vested and better right, either derivative or personal, to the land in question as against the appellees, forecloses any posturing of exemption from the legal force and effect of the writ of execution issued by the trial court to enforce a final judgment under the guise of denial of due process. **A judgment pertaining to ownership and/or possession of real property is binding upon the defendants and all persons claiming right of possession or ownership from the said defendant and the prevailing party need not file a separate action for ejectment to evict the said privies from the premises**.(Emphasis supplied)[39]

Evidently, the decision in Civil Case Nos. 1291 and 4647, which had long become final and executory, can be enforced against herein complainants although they were not parties thereto. There is no question that complainants merely relied on the title of their predecessor-in-interest who was privy to John Sycip, the defendant in Civil Case No. 1291. As such, complainants and their predecessor-in-interest can be reached by the order of demolition.[40]

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[39] *Id.,* at 176.

[40] *Vda. De Medina v. Cruz*, No. L-39272, May 4, 1988, 161 SCRA 36, 43-44.

Respondent sheriffs cannot be faulted with grave misconduct and abuse of authority in implementing the order of demolition. The records before us are simply bereft of any indication supportive of the allegation. Quite the contrary, we find Lastimosa and Palati to have faithfully observed the correct procedure in the implementation of respondent judge's order. In fact, they were extra careful in the enforcement of the same knowing that a lot of attention was given to it by the media, involving as it did a 12-hectare property and about 1,500 persons. Despite the controversy, they were able to carry out the demolition peacefully and successfully.

It is well-settled that when an order is placed in the hands of a sheriff, it is his ministerial duty to proceed with reasonable promptness to execute it in accordance with its mandate. The primary duty of sheriffs is to execute judgments and orders of the court to which they belong. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law. It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must act with considerable dispatch so as not to unduly delay the administration of justice, otherwise, the decisions, orders, or other processes of the courts of justice would be futile.[41]

We take note of the fact that respondent judge had compulsorily retired from the service on February 24, 2001.[42]

IN VIEW OF THE FOREGOING, the Court finds Judge Jose Majaducon *GUILTY* of abuse of his authority for which he is meted a fine of ₱20,000.00 to be deducted from his retirement benefits.

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[41] *Zarate v. Untalan,* A.M. No. MTJ-05-1584, March 31, 2005, 454 SCRA 206, 216.

[42] *Rollo,* p. 176.

For lack of merit, the charge of grave abuse of authority against Elmer Lastimosa and Nasil Palati is hereby *DISMISSED.*

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Chico-Nazario,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 162729. December 17, 2008]

SOLEDAD LEONOR PEÑA SUATENGCO and ANTONIO ESTEBAN SUATENGCO, *complainants, vs.* **CARMENCITA O. REYES,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; ATTORNEY'S FEES WHICH ARE IN THE NATURE OF LIQUIDATED DAMAGES; EXPLAINED.— Strictly speaking, the attorney's fees herein litigated are in the nature of liquidated damages and not the attorney's fees recoverable as between attorney and client enunciated and regulated by the Rules of Court. Liquidated damages are those agreed upon by the parties to a contract to be paid in case of breach thereof. The stipulation on attorney's fees contained in the said Promissory Note constitutes what is known as a penal clause. A penalty clause, expressly recognized by law, is an accessory undertaking to assume greater liability on the part of the obligor in case of breach of an obligation. It functions to strengthen the coercive force of obligation and to provide, in effect, for what could be the liquidated damages resulting from such a breach. The

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[*] Additional member in lieu of Justice Renato C. Corona as per Special Order No. 541.

obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. It is well-settled that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon the obligor. The attorney's fees so provided are awarded in favor of the litigant, not his counsel.

2. REMEDIAL LAW; EVIDENCE; ORAL EVIDENCE; CANNOT PREVAIL OVER THE WRITTEN AGREEMENTS OF PARTIES.— Oral evidence certainly cannot prevail over the written agreements of the parties. The courts need only to rely on the faces of the written contracts to determine their true intention on the principle that when the parties have reduced their agreements in writing, it is presumed that they have made the writings the only repositories and memorials of their true agreement.

3. CIVIL LAW; DAMAGES; LEGAL INTEREST; GUIDELINES ON THE IMPOSITION OF LEGAL INTEREST.— In *Eastern Shipping Lines, Inc. v. Court of Appeals*, we laid down the following guidelines on the imposition of legal interest: "x x x II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due is that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum x x x 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit."

APPEARANCES OF COUNSEL

Tañada Vivo & Tan for petitioners.
Ongsiako & Dela Cruz for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This resolves the petition for review on *certiorari* seeking the modification of the Decision[1] dated October 29, 2003 and the Resolution[2] dated March 10, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 53185. The assailed decision affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Marinduque, Branch 30 in Civil Case No. 95-4 in an action for collection of a sum of money with damages commenced by herein respondent, Carmencita O. Reyes against herein petitioners, spouses Soledad Leonor Peña Suatengco (also known as Sylvia Peña Suatengco) and Antonio Esteban Suatengco.

The essential facts of the case, as recounted by the trial court, are as follows:

> This is an action for Sum of Money with Damages filed by Carmencita O. Reyes against defendants [petitioners] Spouses Soledad Leonor Peña and Antonio Esteban Suatengco, wherein plaintiff (respondent) claimed that sometime in the first quarter of 1994, defendant Sylvia (Soledad) approached her for the purpose of borrowing a sum of money in order to pay her obligation to Philippine Phosphate Fertilizer Corporation (Philphos for brevity). On May 31, 1994, plaintiff paid Philphos the amount of ₱1,336,313.00 and by reason thereof defendants Spouses Sylvia (Soledad) and Antonio executed on June 24, 1994 a Promissory Note binding themselves jointly and severally to pay plaintiff the said amount in

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[1] Penned by Associate Justice Danilo B. Pine (retired) and concurred in by Associate Justices Cancio C. Garcia (now retired Associate Justice of the Supreme Court) and Renato C. Dacudao (retired); *rollo*, pp. 19-24.

[2] *Id.* at 26.

[3] CA Record, pp. 31-35.

31 monthly installments beginning June 30, 1994. Of the amount, however, only one (1) payment in the amount of ₱15,000.00 on July 27, 1994 have been made by defendants. That pursuant to a specific clause in the Promissory Note, defendants have unequivocally waived the necessity of demand to be made upon them to pay as well as a Notice of Dishonor and presentation with acceleration clause. As of March 31, 1995 defendants owe plaintiff ₱1,321,313.00 exclusive of interest, other charges which is already due and demandable but remains unpaid, hence this collection suit with prayer for moral damages and attorney's fees.

A perusal of the record showed that notwithstanding the leniency graciously observed by this court in giving defendants several extensions of time to file their answer with responsive pleading, they failed to do the same thus, upon motion of plaintiff's counsel, defendants were declared as in default on October 27, 1995 and the *ex-parte* reception of plaintiff's evidence was delegated to the Clerk of Court.

At the *ex-parte* hearing, ATTY. EDMUNDO O. REYES, JR., a lawyer by profession connected with the Siguion Reyna, Montecillo and Ongsiako Law Offices, testified that he is the attorney-in-fact of his mother Congresswoman Carmencita O. Reyes, herein plaintiff, to enter into and execute, among other acts, any agreement with the defendant Soledad Leonor Peña Suatengco to collect the amount of around ₱1.4 MILLION and to hold the same in trust for her as shown by a Special Power of Attorney marked Exhibits A to A-2.

Confronted with a document styled as "Promissory Note" dated June 24, 1994 (Exhibit "B"), he identified the signatures of Soledad Peña Suatengco (also known as Sylvia Peña Suatengco) (Exhs. B-1, B-5, B-10 and B-13), Antonio Suatengco (Exhs. B-2, B-6, B-11 and B-14), Atty. Domingo Ganuelas (Exhs. B-3, B-7, B-9 and B-15) and his own signatures (Exhs. B-4, B-8, B-12 and B-16). That their signatures were signed in his presence on June 24, 1994 at the Siguion Reyna, Montecillo and Ongsiako Law Offices. Atty. Domingo Ganuelas was there at the time to assist and advise defendants before executing the Promissory Note.

He explained that defendants own and manage Goldfields Business Development Corporation. Of the ₱1,336,313.00 paid by plaintiff to Philphos on May 31, 1994, which defendants jointly and severally assumed to pay plaintiff under the Promissory Note (Exh. B), only ₱15,000.00 had been paid by them thereby leaving an outstanding

balance of ₱1,321,313.00 plus 12% interest per annum computed from May 31, 1994 and attorney's fees equivalent to 20% of defendants total outstanding balance inclusive of interest, which he believes to be reasonable based on experience considering that the case will be prosecuted outside Metro Manila and the long distance would entail quite an amount of travel for retained counsel.

To corroborate the testimony of Atty. Edmundo O. Reyes, Jr. and to prove the obligation due as well as the damages prayed for, plaintiff Congresswoman CARMENCITA O. REYES representative of the lone district of Marinduque testified that she has been a member of Congress since 1978 until it was abolished in 1986 but after which re-elected in 1987, 1992 and 1995.

She identified her signature on Exhibit A – Special Power of Attorney (Exhs. A-1 and A-2) as well as her signature on the verification portion of her complaint (page 8, Record) and affirmed that she had caused the preparation of the same and that the contents thereof are true and correct.

That on May 31, 1994, she paid Philphos the amount of ₱1,336,313.00 representing defendants' obligation with Philphos. In return for the sum she had advanced, defendants agreed to issue the Promissory Note (Exh. B) for the total amount of indebtedness but out of the said amount of ₱1,336,313.00 only ₱15,000.00 had been paid by them. As a result, her feeling was hurt and wounded. She felt degraded because after helping them to get out of their indebtedness without asking for any interest, it would seem that they lost interest in paying their obligations. She was even more deeply hurt when she found out that the sheriff of this court who went to their place to take some actions regarding this case, was even threatened exposing her constituent to such danger. Said amount is substantial enough to help her constituents because as much as possible she would not deny them everytime they come to her since it would really be a matter of life and death for them.[4]

As can be gleaned from the above narration, the RTC declared the petitioners in default for failure to file their Answer to the complaint. Thereafter, trial *ex parte* was delegated to the Clerk of Court to receive respondent's evidence. Testimonial and documentary evidence were all admitted.

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[4] *Id.* at 31-34.

On November 29, 1995, the lower court rendered its decision, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants ordering defendants:
>
> a) To pay plaintiff actual damages in the amount of ₱1,321,313.00 plus interest at 12% per annum from May 31, 1994 representing the total outstanding balance of defendants' indebtedness to plaintiff by virtue of the Promissory Note dated June 24, 1994.
>
> b) To pay plaintiff moral damages in the amount of ₱1,000,000.00;
>
> **c) To pay plaintiff attorney's fees in the amount of 20% of the sum collected; and**
>
> d) To pay costs of suit.
>
> SO ORDERED.[5]

In their appeal to the CA, petitioners did not question the amount of the judgment debt for which they were held liable but limited the issue to the award of attorney's fees.

On October 29, 2003, the CA promulgated a decision affirming with modification the trial court's decision. It upheld the award of attorney's fees equivalent to 20% of the balance of petitioners' obligation and modified the decision of the trial court by lowering the award of moral damages from One Million Pesos (₱1,000,000.00) to Two Hundred Thousand Pesos (₱200,000.00). Dispositively, the decision reads:

> WHEREFORE, the assailed decision of Branch 30, of the Regional Trial Court of Marinduque in Civil Case No. 95-4 is hereby AFFIRMED with MODIFICATION. The defendant-appellants are ordered to pay plaintiff-appellee moral damages in the amount of ₱200,000.00.[6]

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[5] *Id.* at 35.

[6] *Rollo*, p. 24.

Petitioners moved for the reconsideration of the CA's decision, but the same was denied by the CA in its Resolution dated March 10, 2004.

Aggrieved, petitioners elevated the case to this Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court, submitting thusly —

1. The Court of Appeals acted with grave abuse of discretion and committed a mistake of law in awarding 20% attorney's fees contrary to the 5% as stipulated in the promissory note, Exhibit "B."

2. The Court of Appeals acted with grave abuse of discretion and committed a mistake of law in not reducing the award of the 12% penalty interest.

Clearly from the foregoing formulation of the issues in the present petition, petitioners do not dispute the amount of their indebtedness. They only seek a modification of the decision of the CA insofar as it upheld the RTC's award of attorney's fees equivalent to 20% of their total indebtedness/obligation and the 12% per annum interest of the said obligation.

In support of their contention that the award of attorney's fees was illegal or erroneous, petitioners point to the unqualified rate of 5% stipulated in the promissory note as the "stipulated amount" which was way lower than the 20% as awarded by the RTC. Petitioners cited the case of *Chua v. Court of Appeals*[7] where the Court ruled that is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into contract words which it does not contain. The testimony of Atty. Edmundo O. Reyes that the attorney's fees should be 20% of the outstanding balance cannot prevail over the 5% stipulated in the promissory note. Citing the case of *Bañas v. Asia Pacific Finance Corporation*,[8] petitioners

[7] G.R. No. 109840, January 21, 1999, 301 SCRA 356, 364.

[8] G.R. No. 128703, October 18, 2000, 343 SCRA 527.

maintained that oral evidence cannot prevail over the written agreement of the parties.

On the other hand, respondent contend that petitioners have already waived their rights to question the award for attorney's fees because in their Appellant's Brief filed before the CA, they stated that the stipulated attorney's fees was 20% (not 5%) of the total balance of the outstanding indebtedness. Respondent adds that despite such stipulation, said attorney's fees are subject to judicial control. According to respondent it was not surprising for the CA to focus on the issue of reasonableness of the said attorney's fees because petitioners' line of argument was focused on the same.

The petition is partly meritorious.

The fifth paragraph of the Promissory Note executed by petitioners in favor of respondent undeniably carried a stipulation for attorney's fees and interest in case of the latter's default in the payment of any installment due. It specifically provided that:

> Failure on the part of Sylvia and/or Antonio Suatengco to pay any installment due will render the entire unpaid balance immediately, due and demandable and Cong. Reyes becomes entitled not only for the unpaid balance but also for 12% interest per annum of the outstanding balance of ₱1,336,313.00 from May 31, 1994 until fully paid plus attorney's fees equivalent to 5% of the total outstanding indebtedness.

Strictly speaking, the attorney's fees herein litigated are in the nature of liquidated damages and not the attorney's fees recoverable as between attorney and client enunciated and regulated by the Rules of Court.[9] Liquidated damages are those agreed upon by the parties to a contract to be paid in case of breach thereof.[10] The stipulation on attorney's fees contained in the said Promissory Note constitutes what is known as a penal clause. A penalty clause, expressly recognized by law, is

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[9] *Supra* at 537.

[10] Article 2226 of the Civil Code.

an accessory undertaking to assume greater liability on the part of the obligor in case of breach of an obligation. It functions to strengthen the coercive force of obligation and to provide, in effect, for what could be the liquidated damages resulting from such a breach. The obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach.[11] It is well-settled that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon the obligor. The attorney's fees so provided are awarded in favor of the litigant, not his counsel.[12]

In this case, there is a contractual stipulation in the Promissory Note that in case of petitioners' default on the terms and conditions of the said Promissory Note by failing to pay any installment due, then this will render the entire balance of the obligation immediately due and payable. The total obligation of petitioners amounted to ₱1,321,313.00 (₱1,336,313.00 less ₱15,000.00) plus the 12% interest per annum of the said balance, as well as attorney's fees equivalent to 5% of the total outstanding indebtedness. The Promissory Note was signed by both parties voluntarily, thus the stipulation therein has the force of law between the parties and should be complied with by them in good faith.

The RTC and CA, in awarding attorney's fees equivalent to 20% of petitioners' total obligation, disregarded the stipulation expressly agreed upon in the Promissory Note and instead increased the award of attorney's fees by giving weight and value to the testimony of prosecution witness Atty. Reyes. In agreeing to the reasonableness of the attorney's fees, the CA erroneously took into account the time spent, the extent of the services rendered, as well as the professional standing of the lawyer. Oral evidence certainly cannot prevail over the written agreements of the parties. The courts need only to rely on the

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[11] *Ligutan v. Dela Llana*, G.R. No. 138677, February 12, 2002, 376 SCRA 560, 567-568.

[12] *Supra* note 8.

faces of the written contracts to determine their true intention on the principle that when the parties have reduced their agreements in writing, it is presumed that they have made the writings the only repositories and memorials of their true agreement.[13]

Moreover, it is undeniable from the evidence submitted by respondent herself to the trial court that the agreement of the parties with respect to attorney's fees is only 5% of the total obligation and the trial court granted the 20% rate based on the testimony of respondent's counsel who opined that the same is the reasonable amount of attorney's fees, despite the unequivocal agreement of the parties. Even granting that petitioners may have erroneously stated that the stipulated attorney's fees is 20% in their appellants' brief before the CA, they have nonetheless squarely raised the matter of the lower rate of attorney's fees agreed upon by the parties in the promissory note before that court in their motion for reconsideration. In our mind, there was essentially no change in petitioners' theory of the case before the CA since in their appellants' brief and their motion for reconsideration, their main contention remains the same: that the attorney's fees awarded by the trial court and affirmed by the CA were unwarranted and contrary to law. Neither can we give credence to respondent's assertion that the 5% attorney's fees agreed upon in the promissory note were intended only to be the minimum rate as the promissory note never mentioned a minimum.

In sum, we find it improper for both the RTC and the CA to increase the award of attorney's fees despite the express stipulation contained in the said Promissory Note which we deem to be proper under these circumstances, since it is not intended to be compensation for respondent's counsel but was rather in the nature of a penalty or liquidated damages.

On the matter of interest, we affirm the amount of interest awarded by the two courts below, there being a written stipulation as to its rate. In *Eastern Shipping Lines, Inc. v. Court of*

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[13] *Supra* note 8 at 535.

Appeals,[14] we laid down the following guidelines on the imposition of legal interest:

x x x x x x x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due is that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum x x x

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

The stipulated interest in this case is 12% per annum. As of July 1994, the total indebtedness of petitioners amounted to ₱1,321,313.00. From then on, the ₱1,321,313.00 should have earned the stipulated interest of 12% per annum plus attorney's fees equivalent to 5% of the total outstanding indebtedness. However, once the judgment becomes final and executory and the amount adjudged is still not satisfied, legal interest at the rate of 12% applies until full payment. The rate of 12% per annum is proper because the interim period from the finality of judgment, awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit. The actual

[14] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

base for the computation of this 12% interest is the amount due upon finality of this decision.[15]

WHEREFORE, the Decision dated October 29, 2003 of the Court of Appeals is hereby *MODIFIED* in that the amount of attorney's fees is reduced to five percent (5%) of the total balance of the outstanding indebtedness but the said Decision is *AFFIRMED* in all other respects.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Chico-Nazario,[*] and *Velasco, Jr.,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 167449. December 17, 2008]

BRISTOL MYERS SQUIBB (PHILS.), INC., *petitioner, vs.* **RICHARD NIXON A. BABAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES;

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[15] *Consing v. Court of Appeals*, G.R. No. 143584, March 10, 2004, 425 SCRA 192, 206.

[*] Additional member in lieu of Justice Renato C. Corona as per Special Order No. 541.

[**] Additional member in lieu of Justice Adolfo S. Azcuna as per Special Order No. 542.

LOSS OF TRUST AND CONFIDENCE; REQUISITES.— Articles 282, 283, and 284 of the Labor Code enumerate the just and authorized causes for the dismissal of an employee. Article 282 provides: "ART. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes: x x x *c) Fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative*." It is clear that Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. x x x The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.

2. ID.; ID.; KINDS OF EMPLOYEES; POSITIONS OF TRUST, CLASSES.— There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MERE EXISTENCE OF BASIS FOR BELIEVING THAT THE EMPLOYEE HAS BREACHED THE TRUST AND CONFIDENCE OF THE EMPLOYER IS SUFFICIENT AND DOES NOT REQUIRE PROOF BEYOND REASONABLE DOUBT.— In *Atlas Fertilizer Corporation v. National Labor Relations Commission,* We held that as a general rule, employers are

allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.

AUSTRIA-MARTINEZ, *J.*, *dissenting opinion*:

LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; WILLFUL BREACH OF TRUST AND MERE INFRACTION, DISTINGUISHED. — As held in numerous cases, the Court has distinguished willful breach of trust from a mere infraction: breach of trust must be based on substantial evidence of the commission of a specific act of breach, done willfully, intentionally and knowingly, *without any justifiable excuse,* as distinguished from an act done carelessly, thoughtlessly or inadvertently. Ordinary breach does not suffice. Moreover, the breach of trust must be actual.

APPEARANCES OF COUNSEL

De La Rosa & Nograles for petitioner.
Arcol and Musni Law Office for respondent.

D E C I S I O N

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

A MEDICAL representative should distribute his employer's products per company directions or risk termination. The willful breach of the trust reposed in him by his employer is a cause for the termination of his employment.

In this petition for review on *certiorari* under Rule 45, petitioner seeks to set aside the following dispositions of the

Court of Appeals (CA) in CA-G.R. CV No. 66590: (a) Decision[1] dated September 24, 2004 which annulled and set aside the Decision[2] of the National Labor Relations Commission (NLRC), and (b) Resolution[3] dated March 9, 2005 which denied petitioners' motion for reconsideration.

In 1992, petitioner Bristol Myers Squibb Philippines, Inc. hired respondent Richard Nixon A. Baban as district manager of the company. He was assigned to handle the company's clients in Cagayan de Oro-Northern Mindanao area and its immediate vicinities. His duties included the promotion of nutritional products of petitioner to medical practitioners, sale to drug outlets and the supervision of territory managers detailed in his district.

On June 22, 1998, while conducting a field audit in Mindanao, petitioner's auditor, Sheela Torreja, found twenty (20) packs of "Mamacare" samples in the baggage compartment of a company car with an accompanying note with political overtones. A note stapled on the package reads:

> "*Maskin perdido, muchos gracias por el suporta. Con ustedes ta despidi 36 anos de servicio public. Ay continua ayuda para bien del pueblo Zambo.*
>
> Atty. Ricardo S. Baban, Jr."

The English translation of the above notation is as follows:

> "Even if I've lost *(sic)* thank you so much for the support. Bidding you farewell for 36 years of public service. Will continue to help for the good of the city of Zamboanga.
>
> Atty. Ricardo S. Baban, Jr."

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[1] *Rollo*, pp. 48-61. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Mariflor P. Punzalan Castillo and Sesinando E. Villon, concurring.

[2] NLRC CA No. M-005184-99 dated August 3, 2001.

[3] *Rollo*, pp. 141-143. Penned by Associate Justice Jose L. Sabio, with Associate Justices Mariano C. Del Castillo and Noel G. Tijam, concurring.

Atty. Ricardo S. Baban, Jr., referred to in the note, is respondent's father who had served as councilor in Zamboanga City for thirty-six (36) years but lost in his bid for the vice-mayoralty post in the May 11, 1998 elections. Apparently, respondent's father was thanking supporters through distribution of company sample products.

On July 2, 1998, the auditor reported the incident, prompting the company's Medical Sales Director, Ferdinand Sarfati, to issue a Memorandum requiring respondent to explain in writing within seventy-two (72) hours from notice why he should not be terminated for the infraction.

On July 10, 1998, respondent admitted that he had caused the attachment of the notes to the product samples. He argued that there was no unauthorized distribution of the samples since he intended to give them only to doctors who requested them. To support his claim, he asserted that the samples found by Ms. Torreja were actually to be given to Dr. Kibtiya Gustahan and to Rosita Jacoba, a registered midwife of Sta. Catalina Health Center, Zamboanga City, for distribution to the center.

Furthermore, respondent admitted that he committed an honest mistake, an irresponsible act to have succumbed to the suggestion of Dr. Gustahan. He pleaded for consideration for the lapse, insisting that he has not caused any damage nor injury to the image of the company as the samples were not, in fact, distributed and that no gain was derived by him or his family.

In a private conference held on July 27, 1998 with Mr. Sarfati, respondent was asked to explain the incident. On July 29, 1998, he was required by Atty. Hilario Marbella, manager, to appear for a conference to be held on August 6, 1998. He was given the chance to submit evidence and to be assisted by counsel during the conference. On August 25, 1998, he received under protest the company's memorandum dismissing him from employment.

Questioning the validity of his dismissal, respondent filed a complaint for illegal dismissal with a claim for moral and exemplary damages plus attorney's fees with the Regional Arbitration Branch

No. 10 of the National Labor Relations Commission (NLRC) against petitioner. Likewise impleaded were the company's General Manager, Medical Sales Director, HR Director, Personnel Manager, Auditor and Finance Director.[4]

Labor Arbiter Disposition

On August 30, 1999, the Labor Arbiter dismissed respondent's complaint. The dispositive portion of the Decision reads:

> WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the dismissal of the above-captioned case for lack of merit.
>
> However, Respondent Bristol Myers Squibb Phils., Inc., through a responsible officer, is hereby ordered to pay Complainant the total amount of ₱297,009.84 representing admitted monetary liabilities.
>
> SO ORDERED.[5]

In sustaining the validity of respondent's dismissal, the Labor Arbiter ruled that respondent had violated company rules and regulations by his unauthorized use of its property. Petitioner is therefore justified to declare respondent unworthy of the trust and confidence formerly imposed in him. Not satisfied with the Decision, petitioner appealed to the NLRC.

NLRC Disposition

In a Resolution dated March 15, 2000, the NLRC modified the Labor Arbiter's decision as follows:

> WHEREFORE, premises considered, the decision appealed from is hereby modified:
>
> 1. Declaring illegal the dismissal from the service of the complainant;
>
> 2. Suspending complainant for a period of one (1) month effective 20 August 1998 without pay;

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[4] *Id.* at 179-180.

[5] *Id.* at 94.

3. Ordering respondent Bristol Myers Squibb Phils., Inc., to reinstate Complainant Richard Nixon A. Baban, without loss of seniority rights, to pay him backwages without qualification or deduction from the time his suspension had lapsed until his reinstatement to include 13th month pay and other benefits, allowances and incentives due him attached to his position as District Manager;

4. The award of ₱297,009.84 as admitted monetary liabilities is hereby affirmed *in toto*;

5. Ordering respondent to pay complainant the amount of ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages and ten (10%) percent attorney's fee.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration. In a Resolution dated October 23, 2000, the NLRC disposed in the following tenor:

WHEREFORE, the foregoing considered, we hereby MODIFY and SET ASIDE our pertinent findings in the Decision dated March 15, 2000, and hereby enter a new one thus:

1. The Decision of the Labor Arbiter dated 30 August 1999, upholding the termination of complainant, is hereby reinstated;

2. The award of ₱297,009.84 as admitted liability of respondent is affirmed;

3. An award of financial assistance in favor of complainant by way of separation pay equivalent to one (1) month pay for every year of service covering the period from the date of his regular employment up to 25 August 1998, a fraction of six (6) months being considered one (1) year;

4. All other claims of the complainant are hereby dismissed.

SO ORDERED.[7]

Respondent moved for reconsideration but the NLRC denied the same in a Resolution dated August 3, 2001.

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[6] *Id.* at 115.

[7] *Id.* at 167.

Unconvinced, respondent then filed a petition for *certiorari* under Rule 65 with the CA.

CA Disposition

In a Decision dated September 24, 2004, the CA reinstated the original NLRC Decision dated March 15, 2000.

In ruling in favor of respondent, the CA reasoned that the right of a worker to security of tenure is constitutionally guaranteed. It further declared that, "when a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job." In sum, the CA found the penalty of dismissal unjustified, much too harsh and not commensurate with the alleged infraction.

The motion for reconsideration having been denied in a Resolution dated March 9, 2005, petitioner filed the instant petition.

Issue

Petitioner raises a solitary question for Our consideration: **May the CA order the reinstatement, with full backwages and damages, of a confidential employee whom it had found to be guilty of breach of trust**?[8]

Our Ruling

Petitioner argues that respondent, an employee occupying a position of trust and confidence, admitted attaching his father's political thank you note on the product samples. Respondent likewise confirmed his intention to distribute them to his father's political supporters to thank them for their help in the last election. The act constituted an infraction of company rules. Respondent had breached his employer's trust, meriting a penalty of dismissal.

Articles 282, 283, and 284 of the Labor Code enumerate the just and authorized causes for the dismissal of an employee. Article 282 provides:

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[8] *Id.* at 23.

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

x x x x x x x x x

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

It is clear that Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence.[9]

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, We must first determine if respondent holds such a position.

There are two (2) classes of positions of trust.[10] The first class consists of managerial employees.[11] They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions.[12] The second class consists of cashiers, auditors, property custodians, etc.[13] They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[14]

In this case, respondent was employed as district manager for Cagayan de Oro-North Mindanao and its immediate vicinities.[15]

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[9] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 528-529.

[10] *Mabeza v. National Labor Relations Commission*, G.R. No. 118506, April 18, 1997, 271 SCRA 670.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Rollo*, p. 8.

It is not the job title but the actual work that the employee performs.[16] He was employed to handle pharmaceutical products for distribution to medical practitioners and sale to drug outlets.[17] As a result of his handling of large amounts of petitioner's samples, respondent is, by law, an employee with a position of trust, falling under the second class.[18]

The second requisite is that there must be an act that would justify the loss of trust and confidence.[19] Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[20]

Respondent's act of stapling a thank you note from his father warrants the loss of petitioner's trust and confidence. As the supervisor of fellow medical representatives, he had the duty to set a good example to his colleagues. A higher standard of confidence was reposed in him.

There is no doubt that respondent willfully breached the trust and confidence reposed in him by not asking for permission before using company property for his own or another's benefit, as required in the Company Standards of Business Conduct.[21]

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[16] *Estiva v. National Labor Relations Commission,* G.R. No. 95145, August 5, 1993, 225 SCRA 169.

[17] *Rollo,* p. 8.

[18] *Mabeza v. National Labor Relations Commission, supra* note 10.

[19] *Equitable Banking Corporation v. National Labor Relations Commission,* G.R. No. 102467, June 13, 1997, 273 SCRA 352.

[20] *Garcia v. National Labor Relations Commission,* G.R. No. 113774, April 15, 1998, 289 SCRA 36.

[21] *Rollo,* p. 215.

XV. USE OF COMPANY PROPERTY OR SERVICES FOR PERSONAL BENEFIT

Employees may not use Company property or services for their own or another's personal benefit. Sometimes, the line between personal and Company benefits may be difficult to draw, since activities sometimes

Moreover, when respondent failed to turn over the samples left in his care and stapled the political "thank you" note with the intention of distributing them to his father's supporters, he had, in effect appropriated company property for personal gain and benefit.

Respondent anchors his plea of mercy on filial loyalty to his father and the fact that the samples were still going to the proper parties. His father's loss is of no moment since petitioner has a right not to associate their product with winning or losing politicians. It has every right to ensure that the distribution of medical samples is done in the manner exactly prescribed. Moreover, his claim that the samples would have still gone to the proper parties is wrong. These products were supposed to have been returned to petitioner or one of its agents.

The CA apparently granted his plea for mercy when it ruled that his action while censurable did not merit termination.[22] The CA characterized his action as a mere lapse of human frailty considering the elections were over.[23] Moreover, the stapling of the thank you notes did not give rise to any undue advantage to respondent or his father.[24]

The CA anchored its leniency on *Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division)*.[25] In *Caltex*, an employee named Arnelio M. Clarete was found to have willfully breached the trust and confidence in him by taking a bottle of lighter fluid.[26] However,

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create both personal and Company benefits. In such cases, seek approval when using Company property or services that do not solely benefit the Company. Immediate supervisors should be consulted for such approval.

[22] *Id.* at 58.

[23] *Id.*

[24] *Id.*

[25] G.R. No. 102993, July 14, 1995, 246 SCRA 271.

[26] *Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division), id.* at 277.

the Court refrained from imposing the supreme penalty of dismissal since Clarete had no violations in his eight (8) years of service and the value of the lighter fluid was minimal compared to his salary.[27]

The CA reliance on *Caltex* is misplaced. A closer examination of the two cases reveals that the facts are different. The only similarity is that both respondent and Clarete had no prior violations. However, unlike Clarete, respondent qualifies as a confidential employee. It bears emphasis that there is a well-settled distinction between the treatment of a confidential employee and rank-and-file personnel, insofar as the application of the doctrine of trust and confidence is concerned.[28] There was also no finding that the value of the goods was minimal compared to respondent's salary. Another glaring difference between the two cases is that respondent had people under his supervision and he engaged them to help commit his infraction.[29]

The two requisites for dismissal for loss of trust and confidence having been met, petitioner is well within its rights to dismiss respondent. While the State can regulate the right of an employer to select and discharge his employees, an employer cannot be compelled to continue the employment of an employee in whom there has been a legitimate loss of trust and confidence.[30]

In *Atlas Fertilizer Corporation v. National Labor Relations Commission*,[31] We held that as a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust

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[27] *Id.* at 279-280.

[28] *Philippine Long Distance Telephone Company v. Buna,* G.R. No. 143688, August 17, 2007, 530 SCRA 444.

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

[30] *Tabacalera Insurance Co. v. National Labor Relations Commission,* G.R. No. L-72555, July 31, 1987, 152 SCRA 667.

[31] G.R. No. 120030, June 17, 1997, 273 SCRA 551.

and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.

However, while We find that the dismissal is valid, We are not deaf to respondent's plea for mercy. In a line of cases We have held that separation pay may be awarded as some equitable relief in consideration of the past services rendered.[32] Since respondent was validly dismissed for a cause other than serious misconduct or those that negatively reflect on his moral character,[33] the award of separation pay is justifiable. This award is merely to coat the bitter termination experienced by respondent with a little social justice.[34] Separation pay at the rate of one month salary for every year of service is proper.[35]

WHEREFORE, the petition is *GRANTED*. The Court of Appeals decision is *REVERSED AND SET ASIDE*. The Resolution of the National Labor Relations Commission as modified on October 23, 2000 is *REINSTATED*.

SO ORDERED.

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

Austria-Martinez, J., see dissenting opinion.

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[32] *Tanala v. National Labor Relations Commission,* G.R. No. 116588, January 24, 1996, 252 SCRA 314; *Soco v. Mercantile Corporation of Davao,* G.R. Nos. L-53364-65, March 16, 1987, 148 SCRA 526; *Cruz v. Medina,* G.R. No. 73053, September 15, 1989, 177 SCRA 565; *Philippine Long Distance Telephone Company v. National Labor Relations Commission,* G.R. No. L-80609, August 23, 1988, 164 SCRA 671.

[33] *Philippine Long Distance Telephone Company v. National Labor Relations Commission, supra*.

[34] *Id*.

[35] *Id.* at 683.

SEPARATE OPINIONS

AUSTRIA-MARTINEZ, *J., concurring:*

With due respect to file ponente, I vote for the denial of the petition and the affirmance of the CA Decision.

The *ponencia* holds that "[r]espondent's act of stapling thank you note from his father warrants the loss of petitioner's trust and confidence."

It brings to mind a decision the Third Division promulgated just recently: *Janssen Pharmaceutica v. Silayro*.[1] Therein respondent Benjamin Silayro was a Territory/Medical Representative who was dismissed by Janssen for "(l) dishonesty in accomplishing the report on the number of product samples in his possession; and (2) his failure to return the company vehicle and other accountabilities . . . granting unauthorized premium/free goods in 1994; (2) unauthorized pull-outs from customers in 1995; . . .) cheating during the ROL exam in 1998; and . . . three infractions of delayed process reports in 1998." On the first ground, the ruling of the Court was:

> In this case, petitioner had not been able to identify an act of dishonesty, misappropriation, or any illicit act, which the respondent may have committed in connection with the erroneously reported product sample. While respondent was admittedly negligent in filling out his August and September 1998 DCR, his errors alone are insufficient evidence of a dishonest purpose. ***Since fraud implies willfulness or wrongful intent, the innocent non-disclosure of or inadvertent errors in declaring facts by the employee to the employer will not constitute a just cause for the dismissal of the employee. In addition, the subsequent acts of respondent belie a design to misappropriate product sample. So as to escape any liability, respondent could have easily just submitted for audit only the number of product samples which he reported.*** Instead, respondent brought all the product samples in his custody during the audit and, afterwards, honestly admitted to his negligence. Negligence is defined as the failure to exercise the standard of care

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[1] G.R. No. 172528, February 26, 2008, 546 SCRA 628.

that a reasonably prudent person would have exercised in a similar situation. ***To this Court, respondent did not commit any willful violation, rather he merely failed to exercise the standard care required of a territory representative to carefully count the number of product samples delivered to him in August and September 1998.***[2] (Emphasis supplied)

Moreover, the Court in *Janssen Pharmaceutica* took into account the family situation of respondent Silayro at the time he committed the infraction for which he was dismissed, thus:

> The rest of the infractions imputed to the respondent were committed during the time he was undergoing serious family problems. His inability to comply with the deadlines for his process reports and his lack of care in accounting for the product samples in his custody are understandably the result of his preoccupation with very serious problems. Added to the pressure brought about by the numerous charges he found himself facing, his errors and negligence should be viewed in a more compassionate light.[3]

Petitioner Bristol Myers Squibb (Phil.), Inc. (petitioner) terminated the employment of Richard Nixon Baban (respondent.) as a District Manager (not a medical representative) for willful breach of trust resulting from an incident in that "petitioner's auditor, Sheila Torreja, found 20 packs of "Mamacare" samples in the baggage compartment of a company car with an accompanying note with political overtones" signed by respondent's father and conveying the latter's appreciation for the community's support in the last election. Respondent admitted that the had caused the attachment of the notes to the product samples but explained that said act did not constitute unauthorized distribution because the samples had not yet been actually distributed to the medical professionals for whom they were intended; that no personal gain was derived by respondent, and no damage was suffered by petitioner.

During the investigation by petitioner, it emerged that respondent would have avoided all the trouble had he inquired

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[2] *Id*. at 642.

[3] *Janssen Pharmaceutica v. Silayro, supra* note 1, at 646.

from his immediate superior whether it was proper to attach political notes to the product samples:

> FAS: *Oo kasama siya duon, kasi..* you ask, you ask *ano eh. . .* alam mo Richard, *anytime na mayruon kang* doubt, dapat you should be, be ah, seek the advise of your superior. If you will seek an advise even from me, kung sakali sasabihin mo sa akin — boss puwede ko bang gawin 'to? I would immediately say to you — no.
>
> RAB: *Yun nga, yun nga ang mali ko sir, hindi ko talaga akalain na big deal siya.* That was a very irresponsible.

In essence therefore, respondent's error was brought about by a lack of good judgment, not to breach the truth and confidence reposed upon him by petitioner.

As held in numerous cases, the Court has distinguished willful breach of trust from a mere infraction: breach of trust must be based on substantial evidence of the commission of a specific act of breach, done willfully, intentionally and knowingly, without any justifiable excuse, as distinguished front an act done carelessly, thoughtlessly or inadvertently.[4] Ordinary breach does not suffice.[5] Moreover, the breach of trust must be actual.[6]

Much like in *Janssen*, respondent was impelled by nothing more than poor judgment. He entertained no intention to purposely or willfully violate the trust of petitioner. This is demonstrated by the fact that respondent kept the product samples within the company premises even during the audit that was conducted by petitioner. Had he harbored any ill motives, he could have easily slipped out with the products or prevented access to them

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[4] *Cruz, Jr. v. Court of Appeals*, G.R. No. 14854, July 12, 2006, 494 SCRA 643, 654-655; *Philippine National Construction Corporation v. Matias*, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159.

[5] *Salas v. Aboitiz* One, Inc., G.R. No. 178236, June 27, 2008.

[6] *Manila Memorial Park Cemetery, Inc. v. Panado*, G.R. No. 167118, June 15, 2006, 490 SCRA 751, 768, citing *Dela Cruz v. National Labor Relations Commission*, 335 Phil. 932, 942-943 (1997); *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, March 10, 2006, 484 SCRA 498, 518.

by the auditor. Moreover, respondent readily admitted to his error, explaining that it was the circumstances of his father that led him to his impetuous decision. Besides, it should be noted that the intended recipients of the subject samples were not shown by petitioner to be not qualified under the rules of petitioner to receive such samples.

Thus, the CA is correct in upholding the National Labor Relations Commission in meting out one month suspension on respondent.

EN BANC

[G.R. No. 171654. December 17, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDWIN GAYETA *y* ROBLO *alias* "FREDDIE",** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT ARE GENERALLY BINDING AND CONCLUSIVE ON THE APPELLATE COURT.— In most criminal cases, the issue boils down to the credibility of witnesses. Time and again, we adhere to the principle that the evaluation of the witnesses' credibility is a matter best left to the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.

2. CRIMINAL LAW; ROBBERY; ELEMENTS.— The crime of robbery as defined under Article 293 of the Revised Penal Code has the following elements: (1) intent to gain; (2) unlawful taking; (3) personal property belonging to another; and (4) violence against or intimidation of person or force upon things.

3. ID.; ROBBERY WITH RAPE; ELEMENTS.— Under paragraph 2, Section 294 of the Revised Penal Code, the elements necessary to sustain a conviction for the complex crime of robbery with rape are: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with *animo lucrandi*; and (4) the robbery is accompanied by rape.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY INCONSISTENCIES AS TO MINOR DETAILS AND PERIPHERAL OR COLLATERAL MATTERS.— Inconsistencies as to minor details and peripheral or collateral matters do not affect the credibility of witnesses or the probative weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility, as they negate any suspicion that their testimonies are fabricated or rehearsed.

5. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; DWELLING; APPRECIATED WHEN THE CRIME IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY AND THE LATTER HAS NOT GIVEN PROVOCATION.— When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

*Ferancullo Ferancullo Evora Aguilar & Recto Law Fi*rm for appellant.

D E C I S I O N

TINGA, *J.*:

Before us on automatic review is the Court of Appeals' decision[1] dated 25 November 2005 in CA-G.R. C.R.- H.C. No. 00111 which affirmed with modifications the judgment[2] of the Regional Trial Court (RTC) finding Edwin Gayeta (appellant) guilty of the crime of robbery with rape in Criminal Case No. P-5420 and of the crime of robbery in Criminal Case No. P-5422.

Appellant, together with a co-accused, was charged in two separate informations filed before the RTC of Pinamalayan, Oriental Mindoro, to *wit*:

CRIMINAL CASE NO. P-5422

That on or about the 24th day of [July 1995] at 9:00 o'clock in the evening, more or less, in [B]arangay [xxx],[3] [P]rovince of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, while armed with a firearm, then and there willfully, unlawfully and feloniously and by means of violence and intimidation by hitting with fistic blows one BENJAMIN NICER and thereafter, with intent to gain, took and carried away cash money in the amount of TWO THOUSAND FIVE HUNDRED (₱2,500.00) PESOS, more or less, from Conchita Nicer, to the damage and prejudice of the Offended Party in the aforementioned amount.

CONTRARY TO LAW.[4]

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[1] *Rollo,* pp. 3-28; penned by then Court of Appeals Associate Justice Arturo D. Brion (now a member of this Court) and concurred in by Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes.

[2] CA *rollo,* pp. 20-28; presided by Judge Manuel C. Luna, Jr.

[3] Since the two incidents occurred only in one *barangay*, the place of commission is withheld to preserve confidentiality of the identity of the victim in Criminal Case No. P-5422. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

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

CRIMINAL CASE NO. 5420

That on or about the 24th day of [July 1995] at 9:00 o'clock in the evening, more or less, in [B]arangay [xxx], province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, while armed with a firearm, then and there willfully, unlawfully and feloniously and by means of violence and intimidation, and with intent of gain, took and carried away cash money, wrist watch and ring with a total value of TEN THOUSAND (₱10,000.00) PESOS from Spouses [AAA] and [BBB][5] to the damage and prejudice of the latter; that on the occasion of said robbery, the herein accused Freddie Gayeta in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously and with lewd and unchaste design, have carnal knowledge of [AAA] against her will, to the damage and [prejudice of] the latter.

That in the commission of the crime, the aggravating circumstances of [evident premeditation], abuse of superior strength, dwelling and nocturnity are attendant.

CONTRARY TO [ART. 294], AS AMENDED [by] R.A. 7659.[6]

The factual antecedents, as summarized by the prosecution, are as follows:

On 24 July 1995, at around 8:00 p.m., spouses Benjamin (Benjamin) and Conchita (Conchita) Nicer were drinking *tuba* when two armed men barged into their house. One of the armed men, later identified as Arnaldo Reano (Reano), was wearing a bonnet while the other, identified as appellant, was wearing a hat. The duo announced a hold-up and ordered the spouses to lie down on the floor. Conchita initially refused to lie down until appellant who incidentally had a bayonet in his other hand, poked a gun at her neck. Reano meanwhile kicked and boxed Benjamin until the latter bled and eventually lost consciousness.

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[5] AAA is the wife-victim while BBB is the husband-victim. Their real names are withheld to protect the woman-victim's privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[6] Records (Vol. 2), p. 1.

Appellant then ordered Conchita to hand over their money. Conchita went up to the room to get ₱2,500.00 and gave it to appellant. When the duo fled, the Nicer couple reported the incident to the *barangay* officials who immediately sought police assistance.

Meanwhile, spouses BBB and AAA were watching television in their living room when two armed men, also later identified as Reano and appellant, entered their house. They likewise ordered the spouses to lie down and asked them to produce their money. BBB asked AAA to get the money from their store, which was located some twenty (20) meters away from their house. Appellant accompanied AAA to the store while Reano stayed with BBB.[7]

Upon reaching the store, AAA took ₱5,000.00 and gave it to appellant. While in the act of getting the money, appellant inserted one of his hands inside AAA's short pants. Afterwards, appellant ordered her to undress and lie down on the floor. Appellant also removed his pants, lay on top of AAA, and forcibly had sexual intercourse with her. They went back to the house where appellant also forced AAA to hand over several pieces of jewelry. AAA immediately told BBB that appellant had sexually abused her.[8]

The duo fled but came back a few minutes later. Upon seeing them, BBB took the bayonet and tried to stab appellant, but it was deflected by a hard object and fell on the floor. BBB then tried to grab appellant's gun and they grappled for its possession. The gun fired, hitting BBB on his shoulder but he managed to successfully take possession of the gun and fired it twice in appellant's direction. He missed, however. BBB ran after appellant and saw the responding policemen.[9] The two managed to escape.

SPO2 Mario Matining and SPO3 Ronaldo Morada had been conducting an investigation inside the house of the Nicers when

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[7] TSN, 29 January 1997, pp. 4-5.

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

[9] TSN, 20 November 1996, pp. 14-18.

they received a report that a robbery was then taking place at the house of Spouses AAA and BBB.[10] They rushed to the other crime scene but failed to apprehend the suspects.[11] They recovered a scabbard with a "JR" marking and a bonnet with red stripes. SPO2 Matining identified the scabbard as owned by Reano, whose nickname was "Junior," having known and worked with the latter for some time.[12]

The policemen conducted a pursuit operation in the early morning of 25 July 1995; they arrested Reano and appellant in their respective houses.

Spouses AAA and BBB, on the other hand, went to a hospital where they were subjected to a physical examination. Dr. Preciosa M. Soller examined AAA and issued the following findings in her medico-legal report:

1. scanty pubic hair
2. old healed complete laceration of hymen at 3 o'clock, 5 o'clock, 8 o'clock and 11 o'clock
3. multiparous [vagina] but rugae still present
4. 1-1/2 of thick mucoid, starchy discharge which upon microscopic exams were positive for epithelial and pus cells but no motile sperms were found
5. other parts of body unremarkable.[13]

Likewise, upon examination, BBB was found to have sustained a gunshot wound.[14]

For his defense, appellant claimed that he was conducting surveillance and patrol activities as a member of the *Brigada Lakas* in his *barangay* from 9:00 p.m. of 24 July 1995 to 5:00 a.m. of 25 July 1995 in Putatan, Muntinlupa City.[15] He presented

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[10] TSN, 19 November 1996, p. 6.

[11] TSN, 28 January 1997, p. 4.

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

[13] Records (Vol. 3), p.5.

[14] *Id.* at 6.

[15] TSN, 15 September 1998, pp. 4-6.

a record book containing his signature and the date and time he rendered community service. He pointed out that it was physically impossible for him to be in two different places at the same time.

Reano denied the charges against him and maintained that he was at home with his family in Barangay Tianin, Villapag-asa, Bansud, Oriental Mindoro the whole day of 24 July 1995.[16]

After joint trial, the RTC found appellant guilty of robbery with rape while Reano was found guilty of robbery. The dispositive portion of the judgment states:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

In Criminal Case No. P-5422, the Court finds accused Edwin Gayeta alias "Freddie" GUILTY beyond reasonable doubt as principal of the crime of ROBBERY, defined and penalized under Art. 294 (5) of the Revised Penal Code with the aggravating circumstances of night time and in the dwelling of the offended party, without any mitigating circumstance, and hereby sentences him to an imprisonment of FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY OF *PRISION CORRECCIONAL* AS MINIMUM to TEN (10) YEARS AND ONE (1) DAY OF *PRISION MAYOR* as MAXIMUM, and to pay Sps. Benjamin and Conchita Nicer, in the amount of ₱2,500.00 as reparation for the stolen cash money.

Accused Arnaldo Reano, Jr. is hereby found NOT GUILTY in said criminal case, his [guilt] not having been proven beyond reasonable doubt and he is hereby ACQUITTED, with cost *de oficio*.

In Criminal Case No. P-5420, accused Arnaldo Reano, Jr., in conspiracy with Edwin Gayeta alias "Freddie" is found GUILTY beyond reasonable doubt as principal of the crime of ROBBERY only, defined and penalized under Art. 294 (4) of the Revised Penal Code with the aggravating circumstances of night time and in the dwelling of the offended party without mitigating circumstance and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS, ONE (1) DAY of *PRISION MAYOR* as MINIMUM to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *RECLUSION TEMPORAL* as MAXIMUM.

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[16] TSN, 6 October 1997, p. 8.

Accused Edwin Gayeta alias "Freddie" is found GUILTY beyond reasonable doubt as principal of the special complex crime of ROBBERY with RAPE defined and penalized under Art. 294 (2) as amended by R.A. No. 7659 with the aggravating circumstance of dwelling and there being no mitigating circumstance, hereby sentences him to suffer the most severe penalty of DEATH, together with the accessory penalty provided by law, and to indemnify the victim, [AAA], the amount of ₱50,000.00 without subsidiary imprisonment in case of insolvency.

In addition, accused Arnaldo Reano, Jr. and Edwin Gayeta alias "Freddie" is ordered to pay Sps. [AAA] and [BBB], jointly and severally, the total amount of ₱10,000.00 as reparation for the stolen cash money, wrist watch and ring, and to pay the cost of the suit.

In Criminal Case No. P-5421, accused Arnaldo Reano, Jr. is hereby found GUILTY beyond reasonable doubt as principal of the crime of illegal possession of firearm.

Considering that R.A. No. 8294 is favorable to the accused, he is hereby sentenced to an imprisonment of SIX (6) YEARS of *PRISION CORRECCIONAL* period and a fine of not less than FIFTEEN THOUSAND (₱15,000.00) PESOS.

Accused shall be credited with the full term of his preventive imprisonment, if he [has] any to his credit pursuant to the provisions of [Art. 29 of the Revised Penal Code] as amended by R.A. No. 6127 and B.P. Blg. 85, provided that he shall have agreed to abide with the disciplinary rules imposed upon convicted prisoners, otherwise, he shall be entitled to only FOUR FIFTHS of said preventive imprisonment.

SO ORDERED.[17]

In finding appellants guilty, the trial court relied mainly on the testimonies of the prosecution witnesses. It rejected appellants' respective alibis in the light of the positive identification made by prosecution witnesses.

As to the co-accused, Reano, Jr., who did not appeal his conviction by the lower court, its judgment must be deemed final and executory. On the other hand, the cases of appellant

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[17] CA *rollo,* pp. 27-28.

(Criminal Cases No. 5420 and 5422) were directly elevated to this Court for automatic review in view of the penalty imposed. However, in a resolution dated 24 August 2004, the Court resolved to transfer the case to the Court of Appeals pursuant to our decision in *People v. Mateo*.[18]

On 25 November 2005, the Court of Appeals affirmed the decision of the RTC. The decretal portion of the decision reads:

> WHEREFORE, in view of the foregoing, we hereby AFFIRM the Regional Trial Court's decision convicting appellant Edwin Gayeta alias "Freddie" of the crime of robbery with rape in Criminal Case No. P-5420 and of the crime of robbery in Criminal Case No. P-5422, with the following MODIFICATIONS:
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> A. Criminal Case No. P-5420
>
> 1. The appellant shall additionally pay the victim, [AAA], the sum of Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty-Five Thousand Pesos (₱25,000.00)[,] as exemplary damages.
>
> 2. The reparation for the stolen properties that the trial court ordered is reduced from Ten Thousand Pesos (₱10,000.00) to Six Thousand and Five Hundred Pesos (₱6,500.00).
>
> B. Criminal Case No. P-5422
>
> 1. In lieu of the imprisonment the trial court imposed, the appellant is sentenced to suffer the indeterminate penalty of four years (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and twenty-one (21) days of *prision mayor* as maximum.
>
> SO ORDERED.[19]

Giving full faith and credence to the identification of appellant by prosecution witnesses, the Court of Appeals affirmed the trial court's decision finding appellant guilty of the crime of robbery, as well as the complex crime of robbery with rape. Debunking the presence of nighttime as an aggravating circumstance in robbery, the appellate court modified the penalty

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

[19] *Rollo*, p. 28.

in Criminal Case No. P-5422 from a maximum imprisonment of ten (10) years and one (1) day of *prision mayor* to eight (8) years and twenty-one (21) days of *prision mayor*.

On 28 March 2006, the Court required appellant and the Office of the Solicitor General (OSG) to simultaneously submit their respective supplemental briefs if they so desired.[20] Both parties manifested that they were adopting their respective briefs filed before the appellate court.[21] Thereafter, the case was deemed submitted for decision.

Appellant harps on the apparent inconsistencies in the testimonies of the witnesses regarding his identification as the perpetrator. He anchors his alibi on the claim that he was at Putatan in Muntinlupa City, which is nine hours away by land trip from Bansud, Oriental Mindoro where the incident occurred. Finally, appellant proffers that the alleged rape victim's account of the rape was not credible.[22]

The OSG, in its Brief, maintains that appellant's alibi cannot prevail over the victim's positive identification of appellant as one of the robbers and the person who had raped AAA.[23]

Appellant was charged with and convicted of one count of robbery in Criminal Case No. P-5420 and one count of robbery with rape in Criminal Case No. P-5422.

In most criminal cases, the issue boils down to the credibility of witnesses. Time and again, we adhere to the principle that the evaluation of the witnesses' credibility is a matter best left to the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts

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[20] *Id.* at 29.

[21] *Id.* at 31-36.

[22] CA *rollo*, pp. 77-79.

[23] *Id.* at 102.

or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[24]

The trial court, as affirmed by the Court of Appeals, found the victims' testimonies credible. Indeed, the victims positively identified appellant as the one who broke into the house of the former, and who robbed and ravished the latter.

In Criminal Case No. P-5420, Conchita positively identified the appellant as the one who poked a gun and a bayonet at her neck and ordered her to get money. She gave the money to appellant who, before leaving, even threatened her against reporting the incident to the police.[25]

The crime of robbery as defined under Article 293 of the Revised Penal Code has the following elements: (1) intent to gain; (2) unlawful taking; (3) personal property belonging to another; and (4) violence against or intimidation of person or force upon things. All these elements were sufficiently established through Conchita's testimony. Clearly, robbery was consummated when appellant took the money belonging to Conchita by means of intimidation.

In Criminal Case No. P-5422, AAA testified that she and her husband were watching television in the living room when a man, whom she identified as appellant, barged into the house and ordered them to produce money.[26] It was the same man who ordered her to undress and raped her.[27] All throughout the ordeal, appellant's face was vividly exposed in the well-lighted house, as well as in the store, leading to his easy identification.

Under paragraph 2, Section 294 of the Revised Penal Code, the elements necessary to sustain a conviction for the complex crime of robbery with rape are: (1) the taking of personal property

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[24] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280, 297.

[25] TSN, 22 April 1997, pp. 4-7.

[26] TSN, 29 January 1997, pp. 4-5.

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

is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with *animo lucrandi*; and (4) the robbery is accompanied by rape. All these elements were established. First, appellant employed violence against and intimidation on the person of AAA by threatening her with a gun to compel her to give him money. Second, after taking the money of the victim, he raped her.

The Court of Appeals correctly dismissed the inconsistencies in prosecution witness' statements for being trivial and for not having the effect of impairing her credibility as a witness. Inconsistencies as to minor details and peripheral or collateral matters do not affect the credibility of witnesses or the probative weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility, as they negate any suspicion that their testimonies are fabricated or rehearsed.[28]

Appellant also assails AAA's narration of the rape incident and insinuates that she should have fought off her attacker, given the numerous opportunities presented to her, such as failing to use the bayonet or the bottles that were within her reach to fight off the attacker. Suffice it to say that tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary.[29] As aptly pointed out by the Court of Appeals:

> x x x To be sure, the lack of active resistance cannot be equated to consent. [XXX] might have failed to actively resist Edwin's advances but her failure need not be a manifestation of voluntary submission under the circumstances of the case; she had a gun to her head before, during and after the rape. Force or intimidation fully explains a woman's failure to offer active resistance. Jurisprudence holds in a long line of cases that active physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits to the rapist's advances because of fear for her life and personal safety. Thus, the law does not impose the

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[28] *People v. Bulan*, G.R. No. 143404, 8 June 2005, 459 SCRA 550, 563.

[29] *People v. Gabawa*, 446 Phil. 616, 632 (2003).

burden of active physical resistance on the rape victim when there is attendant force or intimidation.[30]

Anent appellant's alibi, it is inherently weak and cannot prevail over a positive identification from a witness found credible by the trial court.[31] Appellant avers that he was doing his rounds as a member of the Voluntary Lakas Brigade in Muntinlupa, which is nine (9) hours away from Oriental Mindoro, making it physically impossible for him to be at the crime scene. He presented the *barangay* logbook to support his alibi. The OSG correctly countered that this document was neither authenticated nor identified by the persons who supposedly issued them.[32]

All told, the guilt of appellant has been established beyond reasonable doubt.

Under Article 294(1) of the Revised Penal Code, the penalty of *reclusion perpetua* to death shall be imposed upon any person guilty of robbery with rape. The Court of Appeals correctly appreciated the aggravating circumstance of dwelling. When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance.[33] Applying Article 63(1) of the Revised Penal Code, the penalty of death is rightfully imposed in Criminal Case No. P-5420. However,

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[30] *Rollo*, p. 21.

[31] *People v. Quirol*, G.R. No. 149259, 20 October 2005, 473 SCRA 509.

[32] CA *rollo*, p. 102.

[33] *People v. Feliciano*, G.R. No. 102078, 15 May 1996, 326 Phil. 719, 731 (1996).

[34] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

pursuant to Republic Act (R.A.) No. 9346,34 the penalty of death should be commuted to *reclusion perpetua* with no eligibility for parole.

Likewise, the award of moral and exemplary damages by the appellate court, as well as the order of reparation in the amount of ₱6,500.00, is affirmed.

In Criminal Case No. P-5422, the Court of Appeals properly appreciated the aggravating circumstance of dwelling for the same reason as in Criminal Case No. P-5420. The appellate court also correctly ruled out nighttime as an aggravating circumstance, there being no evidence to show that the accused purposely sought nighttime to facilitate the commission of the offense. We thus concur with the Court of Appeals' decision in applying the Indeterminate Sentence Law and imposing the penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and twenty-one (21) days of *prision mayor* as maximum.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R C.R.-H.C. No. 00111 affirming with modification the Decision dated 12 March 1999 of the Regional Trial Court, Branch 42, Oriental Mindoro, finding appellant Edwin Gayeta y Roblo guilty beyond reasonable doubt of the crime of robbery in Criminal Case No. P-5420 and robbery with rape in Criminal Case No. P-5422, as well as awarding damages to the victim, is *AFFIRMED* with the *MODIFICATION* that the penalty of death therein imposed is reduced to *reclusion perpetua* with no eligibility for parole.

SO ORDERED.

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

Corona, J., on official leave.

Brion, J., no part.

EN BANC

[G.R. No. 172776. December 17, 2008]

COMMISSION ON HIGHER EDUCATION, *petitioner, vs.* **ATTY. FELINA S. DASIG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JUDGMENTS; DOCTRINE OF *"STARE DECISIS ET NON QUIETA MOVERE"*; APPLICABLE IN CASE AT BAR.— Despite having been apprised of the Court's findings in the disbarment case which should be a matter of judicial notice in the first place, the Court of Appeals still insisted on its divergent finding and disregarded the Court's decision ordering the disbarment of Dasig in which one of the determinative facts in issue was whether Dasig had attempted to extort money from Dela Torre, Eje and Ng who in turn had wanted to have their academic records corrected to conform to their birth certificates. Apart from its mandated duty to take judicial notice of the resolution in the disbarment case, the Court of Appeals is bound by this Court's findings and conclusions in the said resolution in accordance with the doctrine of "*stare decisis et non quieta movere*." Although the administrative case is different from the disbarment case, the parties are different and trials were conducted separately, there can only be one truth: Dasig had attempted to extort money from the students. For the sake of certainty, a conclusion reached in one case should be applied to that which follows, if the facts are substantially the same, even though the parties may be different. Otherwise, one would be subscribing to the sophistry: truth on one side of the Pyrenees, falsehood on the other!

2. ID.; COURTS; LOWER COURTS HAVE THE DUTY TO OBEY THE DECISIONS OF THE SUPREME COURT AND RENDER RESPECT TO ITS STATUS AS THE APEX OF THE HIERARCHY OF COURTS; CASE AT BAR.— The Court of Appeals asserted that "petitioner did not participate in the disbarment proceedings, and as a necessary consequence of her omission it became automatically undisputed, and thus glaring in the eyes of the High Court, that she extorted money

from the students." In more comprehensible terms, the appellate court declared that petitioner did not participate in the disbarment proceedings; and because of her non-participation the conclusion on her extortion activity was unquestioned and appeared ineluctable from the Court's perspective. It is worth noting that disbarment proceedings are under the administration of the Supreme Court under the Rules of Court pursuant to its constitutional mandate. Thus, the statements of the Court of Appeals constitute a desultory assault on the institutional integrity of this Court, aside from being incorrect and illogical. Indeed, the remarks tend to erode and undermine the people's trust and confidence in the judiciary, ironically coming from one of its subordinate courts. No lower court justice or judge may deride, chastise or chide the Supreme Court. And the "with due respect" approach that preceded the remarks as a veneer cannot justify much less obliterate the lack of respect which the remarks evince. In fact, it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." "There is only one Supreme Court from whose decision all other courts should take their bearings," so declared Justice J. B. L. Reyes.

3. ID.; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AND ADMINISTRATIVE BODIES ARE ACCORDED NOT ONLY GREAT RESPECT BUT EVEN FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— [B]y reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; hence, factual findings of quasi-judicial and administrative bodies are accorded not only great respect but even finality by this Court when they are supported by substantial evidence. The gauge of substantial evidence, which is the least demanding in the hierarchy of evidence, is satisfied since there are reasonable grounds to believe that Dasig is guilty of the charges against her which led to her dismissal from service. And neither Dasig nor the Court of Appeals was able to show gross abuse of discretion, fraud, or error of law on the part of the CHED and the CSC.

4. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; FORFEITURE OF LEAVE CREDITS, NOT ONE OF THE ACCESSORY PENALTIES OF DISMISSAL FROM THE SERVICE.— [T]he accrued leave credits of Dasig shall not be forfeited despite the imposition of the penalty of dismissal from government service. The forfeiture of leave credits is not one of the accessory penalties of dismissal from service imposed by Section 58 of the Uniform Rules on Administrative Cases in the Civil Service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Adolfo P. Runas for respondent.

D E C I S I O N

PER CURIAM:

This is a Rule 45 petition for review[1] of the 15 September 2003[2] Decision and 18 May 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 61302.

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[1] *Rollo,* pp. 8-39.

[2] *Id.* at 41-52. Penned by Associate Justice Rosmari D. Carandang; and concurred in by Associate Justices Eugernio Labitoria and Mercedes Gozo-Dadole. The dispositive portion reads as follows:

> WHEREFORE, premises considered, the instant Petition for Review is **GRANTED** and the assailed Resolution (No. 002021) of the CSC is hereby **REVERSED AND SET ASIDE**. By way of penalty for Petitioner's improper acts constituting **Simple Misconduct**, however, she is hereby suspended for six (6) months without pay.
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> SO ORDERED.

[3] *Id.* at 60-65. Penned by Associate Justice Rosmari D. Carandang; and concurred in by Associate Andres B. Reyes, Jr., and Aurora Santiago-Lagman. The dispositive portion reads as follows:

> WHEREFORE, premises considered, for want of merit, CHED's and petitioner's respective Motions for Reconsideration are **DENIED**, and accordingly [O]ur September 15, 2003 Decision herein sought to be reconsidered is hereby **UPHELD** and **REITERATED**.
>
> SO ORDERED.

The factual antecedents of the case follows.

Respondent Felina Dasig (Dasig) was the Chief Education Program Specialist of the Standards Development Division, Office of Programs and Standards, of petitioner Commission on Higher Education (CHED). She had also served as the officer-in-charge of the Legal Affairs Service (LAS) of the CHED.

In a Memorandum dated 9 October 1998,[4] the Director of the LAS brought to the attention of the CHED several complaints on the alleged anomalous activities of Dasig during her stint as the officer-in-charge of LAS. Attached to the memorandum were the sworn affidavits of the complainants.[5] The complainants consisted of Rosalie Dela Torre (Dela Torre), Rocella Eje (Eje) and Jacqueline Ng (Ng), students who applied to have their names corrected in their scholastic records to conform with their birth certificates; Maximina Sister (Sister), the CHED Human Resource Management Assistant assigned to the Records Unit; and Don Cesar Mamaril (Mamaril), Leysamin Tebelin (Tebelin), Joemar Delgado (Delgado), and Ellen Grace Nugpo (Nugpo), all from the CHED LAS staff. All the students alleged that Dasig tried to exact money from them under the pretense of attorney's fees in connection with their requests for correction of names in their academic records. Dasig's former staff at the LAS corroborated the allegations of the students. They also alleged that Dasig attempted to persuade them to participate in anomalous activities. Sister, in turn, claimed that Dasig refused to return the Official Record Book of the CHED which the latter borrowed from her.

Dasig submitted a Memorandum[6] and a Counter-Affidavit[7] to answer the charges against her. In her memorandum, she denied all the charges against her. She alleged that it was not within the CHED's power to entertain the request for change of name so she advised the students to file petitions in court.

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[4] *Id.* at 119-121.

[5] *Id.* at 122-129.

[6] *Id.* at 134-137.

[7] *Id.* at 138-155.

Dasig denied that the alleged closed-door meeting on 3 September 1998 with her former staff at the LAS in which she tried to persuade them to accept ₱20,000.00 from Ng had ever taken place for she was then allegedly in the Office of the Chairman for the Investigation and Performance Audit of Dr. Jaime Gellor, then President of the Central Mindanao University. As to the charge that she improperly took the Official Record Book on 7 September 1998 at around 3:00 p.m. and refused to return the same, Dasig insisted that she was inside the LAS hearing room during that time conducting the preliminary conference on the administrative complaint filed by Dr. Aleli Cornista against Dr. Magdalena Jasmin, Dr. Perlita Cabilangan, Dr. Arsenia Lumba, and Dr. Teresita de Leon, all from CHED Region 3, together with Special Investigators Buenaventura Macatangay (Macatangay) and Eulando Lontoc (Lontoc).

In her counter-affidavit,[8] Dasig explained that she had not offered her services as a lawyer to any person and that she had never represented any clients other than the immediate members of her family ever since she was admitted to the bar. Dasig denied the allegation that she had offered to look for a lawyer for the petitioners since it was inconceivable to have a lawyer who would accept ₱5,000.00 as attorney's fees.

The CHED formed a hearing committee and designated the members to investigate the complaints against Dasig in Resolution No. 166-98.[9] Dela Torre and Eje were not able to participate in the hearings conducted by the committee for they could not be notified in their given addresses while Ng and Dasig chose not to participate despite notice. However, Mamaril, Tebelin, Delgado, and Nugpo all affirmed before the committee the veracity of Ng's claim that Dasig solicited money from him and attested to the fact that Dasig even called them together with Macatangay and Lontoc for an emergency closed door meeting at the LAS conference room at around 4:00 p.m. on 3 September 1998. Dasig allegedly told them that Ng was willing to pay ₱20,000.00

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[8] *Id.* at 138-155.

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

for the publication of her request for correction of name and persuaded them to accept said amount for the purchase of a television and VHS player for their office and that any excess money would be divided equally among them. They all objected to Dasig's suggestion.[10]

The hearing committee concluded that there was substantial evidence on record to hold Dasig liable for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service and recommended that she be dismissed. The CHED found that the complaints against Dasig were substantiated and affirmed the recommendation of the hearing committee to dismiss her from the service as her actions constituted gross misconduct, dishonesty, and conduct prejudicial to the best interest of the service.[11] The Civil Service Commission (CSC) upheld the decision of the CHED[12] and denied Dasig's motion for reconsideration.[13]

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[10] *Id.* at 171-173.

[11] *Id.* at 115-117. The dispositive portion reads as follows:

WHEREFORE, premises considered, the recommendation of the Hearing Committee is hereby **AFFIRMED**, thus, respondent is hereby ordered **DISMISSED** from the service with forfeiture of leave credits and retirement benefits without prejudice to criminal or civil liability per Section 9, Rule XIV of the Omnibus Rules. Let copy of this **ORDER** be furnished the Personnel Division, Human Resource Development, this Commission, the Office of the Ombudsman, Arroceros, Manila and the Civil Service Commission, Constitution Hills, Batasan, Quezon City.

SO ORDERED.

[12] *Id.* at 99-113. The dispositive portion reads as follows:

WHEREFORE, premises considered, the appeal of Atty. Felina Dasig is hereby dismissed for lack of merit. Accordingly, the decision of the Commission on Higher Education, finding Felina Dasig guilty of Insubordination, Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service and imposing on her the penalty of dismissal is affirmed.

[13] *Id.* at 66-70.

Dasig filed a petition for review under Rule 43 with the Court of Appeals and raised four issues before it.[14] The first issue was whether Dasig was denied due process of law; the second was whether the CSC erred in not giving weight to the 1 June 1999 Resolution of CHED Chairman Angel Alcala (Alcala) absolving her from any administrative liability; the third was whether the CSC erred in not considering evidence discovered after her dismissal which would have materially affected the result of the case; and the fourth or last was whether the CSC erred in not considering that the penalty of dismissal imposed on her was too harsh and oppressive taking into account her thirty years of government service.

While the case was pending before the appellate court, this Court came out with a Resolution dated 1 April 2003[15] which ordered the disbarment of Dasig. Several high-ranking officers of the CHED filed an administrative case for disbarment against Dasig, charging her with gross misconduct in violation of the Attorney's Oath "for having used her public office to secure financial spoils to the detriment of the dignity and reputation of the CHED" with one of the grounds for disbarment being Dasig's exaction of money from Dela Torre, Eje and Ng. In the administrative case, the Court affirmed the following findings of fact:

In this case, the record shows that the respondent, on various occasions, during her tenure as OIC, Legal Services, CHED,

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[14] *Id.* at 183-239.

[15] *Atty. Vitriolo v. Atty. Dasig*, 448 Phil. 199, 210 (2003). The dispositive portion reads as follows:

> WHEREFORE, respondent Atty. Felina S. Dasig is found liable for gross misconduct and dishonesty in violation of the Attorney's Oath as well as the Code of Professional Responsibility, and is hereby ordered *DISBARRED*.
>
> Let copies of this Resolution be furnished to the Bar Confidant to be spread on the records of the respondent, as well as to the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for dissemination to all courts throughout the country.
>
> SO ORDERED.

attempted to extort from Betty C. Mangohon, Rosalie B. Dela Torre, Rocella G. Eje, and Jacqueline N. Ng sums of money as consideration for her favorable action on their pending applications or requests before her office. The evidence remains unrefuted, given the respondent's failure, despite the opportunities afforded her by this Court and the IBP Commission on Bar Discipline to comment on the charges. We find that respondent's misconduct as a lawyer of the CHED is of such a character as to affect her qualification as a member of the Bar, for as a lawyer, she ought to have known that it was patently unethical and illegal for her to demand sums of money as consideration for the approval of applications and requests awaiting action by her office.[16] (Emphasis supplied.)

The Court denied with finality the motion for reconsideration of Dasig in a resolution dated 17 June 2003.[17] Despite the Court's findings in the disbarment proceeding, the Court of Appeals, however, gave a different assessment of the evidence on record as it found that Dasig was only "moonlighting" when she offered her legal services to the students who were requesting the CHED to change their names appearing in their academic records to conform to their birth certificates. The money which Dasig had asked from the students was, as found by the appellate court, for "attorney's fees" and other litigation expenses. The appellate court held that the acts of Dasig had constituted only simple misconduct.

Only the aspect of the Court of Appeals' decision finding Dasig liable only for simple misconduct is subject to review before this Court. The appellate court decided all the first three issues in favor of the CHED. It held that administrative due process was complied with since Dasig was given a fair and reasonable opportunity to explain her side. It also declared the 1 June 1999 resolution of CHED Chairman Alcala absolving Dasig invalid and without legal effect since it was he alone who signed it, contrary to the collegial structure of the CHED. And it gave scant attention to the additional affidavits submitted by

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[16] *Atty. Vitriolo v. Atty. Dasig*, 448 Phil. 199, 207-208 (2003).

[17] *Id.* at 595.

Dasig as they were not presented during the proceedings before the CHED in line with the rule that no question, issue, or evidence shall be entertained on appeal unless it was raised in the court or agency below.

The Court of Appeals explained its "moonlighting" approach, thus:

> After a close perusal of the vital portions of Jacqueline S. Ng's Affidavit, We find that Petitioner was trying to collect the money from the three students as her attorney's fees and for the purpose of covering the expenses which shall be incurred in instituting the appropriate action or proceeding in court- filing fee, publication, *etc*. for the correction of the name of said student affiant.[18]
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> x x x x x x x x x
>
> We are of the well-considered view, that [p]etitioner was not trying to use the influence of her position to cause the correction of the names of the students within the CHED. It can be safely assumed that as a lawyer, [p]etitioner is fully aware that an error in a person's name may only be legally corrected upon the filing of the necessary Special Proceeding under the Rules of Court, specifically Rule 108. Analy[z]ing [p]etitioner's acts, therefore, [w]e hold that she was merely trying to engage in the private practice of the legal profession while employed at the CHED. This is a classic case of "moonlighting", that is, holding an additional job in addition to a regular one. We are perfectly mindful of [p]etitioner's indiscretion, and so hold that her acts were improper and unbecoming of a public servant, more particularly of one with a relatively high and responsible position like her. Simply put, [p]etitioner's acts must not be condoned, particularly considering that she even attempted to persuade her former staff at the Legal Affairs Services Office to partake of and materially benefit from her would-be earnings in the aborted deal with the three students.[19] x x x.

After having been apprised of the Court's factual findings in the disbarment case against Dasig, the Court of Appeals maintained its decision and denied petitioner's motion for reconsideration. Specifically, it held thus:

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[18] *Id*. at 47.

[19] *Id*. at 49.

The foregoing ruling of the Highest Court of the Land notwithstanding, [w]e still do not find the propriety of modifying [o]ur conclusion that petitioner should be held administratively liable only for the less serious infraction of Simple Misconduct. Verily, the disbarment proceedings against petitioner was predicated in part upon the provisions of the Attorney's Oath which contained more stringent and rigid standards by which a lawyer's act must be tested, whereas [w]e examine petitioner's conduct by using the rules as fixed by the CSC as well as jurisprudence. But more importantly, aside from the difference in the laws applied, [w]e cannot defer to and take bearing with the ruling of the Supreme Court considering that there is a significant variance between the undisputed facts as found by the High Court in the disbarment proceedings against petitioner, on one hand, and the material factual backdrop upon which [w]e tested petitioner's conduct in public service, on the other. It must be emphasized that petitioner did not participate in the disbarment proceedings, and as a necessary consequence of her omission it became automatically undisputed, and thus glaring in the eyes of the High Court, that she extorted money from the students by way of consideration for a favorable resolution of the students' applications and formal requests for the correction of their names, which were purportedly pending before petitioner's office at the CHED.[20] x x x.

The lone issue raised in the present petition is whether the Court of Appeals had correctly held Dasig liable only for simple misconduct.

The Court finds the present petition meritorious.

The Court of Appeals committed a monumental blunder when it arrived at findings of fact different from those of the Court in the disbarment case. It is inexplicable why the appellate court would propound and insist on its "moonlighting" conclusion when even Dasig herself had denied offering her services to anyone in the first place. It was only after the Court of Appeals had come up with such finding that Dasig incorporated it into her theory of defense, belatedly arguing that she should not be held liable for "moonlighting" since the CHED allows limited practice of law pursuant to an alleged CHED memorandum

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

dated 16 January 1995 entitled, "Authorizing Lawyers of the Commission to Engage in Limited Practice of Profession."

Despite having been apprised of the Court's findings in the disbarment case which should be a matter of judicial notice[21] in the first place, the Court of Appeals still insisted on its divergent finding and disregarded the Court's decision ordering the disbarment of Dasig in which one of the determinative facts in issue was whether Dasig had attempted to extort money from Dela Torre, Eje and Ng who in turn had wanted to have their academic records corrected to conform to their birth certificates.

Apart from its mandated duty to take judicial notice of the resolution in the disbarment case, the Court of Appeals is bound by this Court's findings and conclusions in the said resolution in accordance with the doctrine of "*stare decisis et non quieta movere*."[22] Although the administrative case is different from the disbarment case, the parties are different and trials were conducted separately, there can only be one truth: Dasig had attempted to extort money from the students. For the sake of certainty, a conclusion reached in one case should be applied to that which follows, if the facts are substantially the same, even though the parties may be different. Otherwise, one would be subscribing to the sophistry: truth on one side of the Pyrenees, falsehood on the other![23]

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[21] RULES OF COURT, Rule 129, Sec. 1. *Judicial notice, when mandatory*.—A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[22] Literally means: Follow past precedents and do not disturb what has been settled. See *Negros Navigation Co., Inc. v. CA*, 346 Phil. 551 (1997); *Abad et al., v. NLRC,* 349 Phil. 1014 (1998).

[23] By MICHEL DE MONTAIGNE. See Montaigne, *Essais*, GREAT BOOKS OF THE WESTERN WORLD (Chicago: Encyclopedia Britannica), p. 240.

Obstinately, the appellate court sought to justify its presumptuously aberrant stance on the alleged circumstance that Dasig had not participated in the disbarment case. A careful look at the Court's decision shows that Dasig had been duly informed of the disbarment case when the Court in a resolution dated 3 February 1999 required her to file a Comment on the charges against her. The resolution was sent to the same address she had used in filing the petition for review with the Court of Appeals. She likewise chose not to comply with the order of the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline dated 6 February 2001 which had directed her to submit an Answer to the Complaint. The IBP Commission had directed her anew to file her Answer in an order dated 8 January 2002, but again she failed to comply with the directive.[24] Although Dasig had chosen not to respond to the complaints against her, she was still able to file a motion for reconsideration, which this Court denied with finality. Clearly, Dasig was given sufficient opportunity to respond to the charges against her.

The Court of Appeals asserted that "petitioner did not participate in the disbarment proceedings, and as a necessary consequence of her omission it became automatically undisputed, and thus glaring in the eyes of the High Court, that she extorted money from the students."[25] In more comprehensible terms, the appellate court declared that petitioner did not participate in the disbarment proceedings; and because of her non-participation the conclusion on her extortion activity was unquestioned and appeared ineluctable from the Court's perspective. It is worth noting that disbarment proceedings are under the administration of the Supreme Court under the Rules of Court[26] pursuant to its constitutional

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[24] *Supra* note 12.

[25] *Supra* note 17.

[26] RULES OF COURT, Rule 139-B, Section 1. *How Instituted*.— Proceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported

mandate.[27] Thus, the statements of the Court of Appeals constitute a desultory assault on the institutional integrity of this Court, aside from being incorrect and illogical.

Indeed, the remarks tend to erode and undermine the people's trust and confidence in the judiciary, ironically coming from one of its subordinate courts. No lower court justice or judge may deride, chastise or chide the Supreme Court. And the "with due respect" approach that preceded the remarks as a veneer cannot justify much less obliterate the lack of respect which the remarks evince. In fact, it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation."[28] "There is only one Supreme Court from whose decision all other courts should take their bearings," so declared Justice J. B. L. Reyes.[29]

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by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts. x x x

SEC. 12. *Review and decision by the Board of Governors*.— x x x (b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action. x x x

[27] Article 8, Section 5. The Supreme Court shall have the following powers: x x x (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. x x x

[28] *Conducto v. Judge Monzon*, 353 Phil. 796, 813 (1998), *Tahanan Development Corp. v. Court of Appeals*, 203 Phil. 652, 690 (1982).

[29] *Albert v. Court of First Instance of Manila*, No. L-26364, 29 May 1968, 23 SCRA 948, 961.

Quite obviously, when this Court dispensed the supreme penalty on Dasig in the disbarment case based on the factual milieu it had upheld, the Court of Appeals should have done no less by affirming the most severe penalty imposable under the law which the CHED and the CSC had inflicted on Dasig in the administrative case that involved the same factual milieu. But, alas, the appellate court unjustifiably chose to reduce the penalty by downgrading the administrative offense.

The Court of Appeals erred when it found that Dasig had merely attempted to practice law while employed at the CHED in offering her services to the three students for the correction of their names through judicial proceedings under Rule 108. The procedure under Rule 108 of the Rules of Court was not applicable to the students who only wanted to correct entries in their academic records to conform to their birth certificates. Rule 108 is for the purpose of correcting or canceling entries in the civil registry involving (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.[30] Hence, there is no justification for Dasig to ask for money under the guise of attorney's fees and litigation expenses when it was her duty as the officer-in-charge of LAS to either approve or disapprove the students' request to change entries in their academic records to conform to their birth certificates.

From another perspective, the appellate court erred when it disregarded the factual findings of the CHED. It ignored the well-settled rule that by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; hence, factual findings of quasi-judicial and administrative bodies are accorded not only great respect but even finality by

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[30] RULES OF COURT, Rule 108, Section 2.

this Court when they are supported by substantial evidence.[31] The gauge of substantial evidence,[32] which is the least demanding in the hierarchy of evidence, is satisfied since there are reasonable grounds to believe that Dasig is guilty of the charges against her which led to her dismissal from service. And neither Dasig nor the Court of Appeals was able to show gross abuse of discretion, fraud, or error of law on the part of the CHED and the CSC. The findings of the administrative agencies were further bolstered when the Court arrived at similar findings of fact in the disbarment case, in which the quantum of proof is preponderance of evidence. In evaluating the same evidence as this Court in the disbarment case, it is truly inconceivable how the Court of Appeals could have arrived at its "moonlighting" finding.

However, the accrued leave credits of Dasig shall not be forfeited despite the imposition of the penalty of dismissal from government service. The forfeiture of leave credits is not one of the accessory penalties of dismissal from service imposed by Section 58[33] of the Uniform Rules on Administrative Cases in the Civil Service.

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[31] See *Pajo, etc., et al. v. Ago and Ortiz*, 108 Phil. 905, 915-916 (1960); *Ateneo de Manila University v. CA,* 229 Phil. 128, 133 (1986); *St. Mary's College (Tagum, Davao) v. NLRC*, G.R. No. 76752, 12 January 1990, 181 SCRA 62, 66; *Tropical Hut Employees' Union-CGW v. Tropical Hut Food Market, Inc.*, G.R. Nos. 43495-99, 20 January 1990, 181 SCRA 173, 187; *Loadstar Shipping Co., Inc. v. Gallo*, 229 SCRA 654 (1994); *Inter-Orient Maritime Enterprises, Inc. v. NLRC*, G.R. No. 115286, 11 August 1994, 235 SCRA 268, 277; *Five J Taxi v. NLRC*, 235 SCRA 556, 560 (1994); *R & E Transport, Inc. v. Latag*, G.R. No. 155214, 13 February 2004, 422 SCRA 698.

[32] RULES OF COURT, Rule 133 Section 5. *Substantial evidence*.— In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.—

[33] Section 58. Administrative Disabilities Inherent in Certain Penalties.

a) The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

WHEREFORE, the petition is hereby *GRANTED*. The assailed Court of Appeals' Decision and Resolution dated 15 September 2003 and 18 May 2008 respectively are *REVERSED* and *SET ASIDE*, and Civil Service Commission Resolution No. 001302 affirming the CHED Resolution dated 29 November 1999 is hereby *REINSTATED* with the *MODIFICATION* that the accessory penalty of forfeiture of leave credits be deleted. Hence, Felina Dasig is *ORDERED* to be *DISMISSED* from the service with cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service, including that in government-owned or controlled corporations.

Let a copy of this decision be furnished to the Presiding Justice, Court of Appeals, Manila, for dissemination to the Associate Justices, Court of Appeals, for their information and guidance.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, and *Brion, JJ.,* concur.

Corona and *Leonardo-de Castro, JJ.,* on official leave.

Nachura, J., no part.

FIRST DIVISION

[G.R. No. 172874. December 17, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO CASTRO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL.—** We have time and again said that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the opportunity to examine their demeanor on the witness stand. Unless shown that the trial court overlooked or misunderstood some facts or circumstances of weight and substance that could affect the result of the case, its findings on questions of facts will not be disturbed on appeal.

2. **ID.; ID.; ID.; GREATER WEIGHT IS USUALLY GIVEN BY COURTS TO THE TESTIMONY OF A MINOR GIRL WHO IS A VICTIM OF SEXUAL ASSAULT.—** Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, as in this case, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and have the offender apprehended and punished.

3. **CRIMINAL LAW; RAPE; THE SLIGHTEST PENETRATION OF THE MALE ORGAN INTO THE FEMALE ORGAN IS SUFFICIENT TO CONSUMMATE RAPE.—** [F]ull or deep penetration is not necessary to consummate sexual intercourse; it is enough that there is the slightest penetration of the male organ into the female sex organ. The mere touching by the male organ of the labia of the pudendum of the woman's private part is sufficient to consummate rape.

4. **ID.; ID.; A MEDICAL EXAMINATION OF THE VICTIM IS NOT INDISPENSABLE IN A PROSECUTION FOR RAPE.—** The commission of rape against complainant cannot be negated simply because of the absence of the testimony of the doctor who examined the victim. It is well entrenched in our jurisprudence that a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape.

5. REMEDIAL LAW; EVIDENCE; ALIBI; WHEN TO PROSPER AS A DEFENSE.— For alibi to prosper, 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 at the time. 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.

6. CRIMINAL LAW; QUALIFIED RAPE; IF THE OFFENDER IS MERELY A RELATION, IT MUST BE ALLEGED IN THE INFORMATION THAT HE IS A RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE THIRD CIVIL DEGREE; CASE AT BAR.— Under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, qualified rape is committed when, among others, "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". It is well-settled that these attendant circumstances of minority of the victim and her relationship to the offender are special qualifying circumstances which must be specifically alleged in the information and proved with certainty in order to warrant conviction for the crime of qualified rape and the imposition of the death penalty. x x x [W]e have previously held that if the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." Thus, in the instant case, the allegation that complainant is the sister-in-law of accused-appellant is not specific enough to satisfy the special qualifying circumstance of relationship. It is necessary to specifically allege that such relationship was by affinity within the third civil degree. Consequently, due to the defect in the information charging accused-appellant of rape, he can only be held liable for simple rape and meted the penalty of *reclusion perpetua*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.:*

On appeal is the decision[1] dated February 15, 2006 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00126* which affirmed *in toto* an earlier decision[2] of the Regional Trial Court of Pasig City, Branch 162 in Criminal Case No. 117506-H, finding accused-appellant guilty beyond reasonable doubt of the crime of Rape and imposing upon him the penalty of *reclusion perpetua*.

Consistent with our decision in *People v. Cabalquinto*,[3] the real name of the rape victim in this case is withheld and instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

In the court of origin, accused-appellant was charged with the crime of rape in an Information[4] dated February 2, 2000. The crime was alleged to have been committed as follows:

> On or about November 11, 1999, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his sister-in-law, [AAA], a minor, fourteen (14) years of age, against her will and consent. (Word in bracket ours)
>
> CONTRARY TO LAW.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Hakim S. Abdulwahid and Associate Justice Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 2-14.

[2] Decided by Judge Erlinda Pinera Uy; CA *Rollo*, pp. 15-26.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *Rollo*, p. 9.

When arraigned on July 12, 2000, 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 testimony of the victim herself. The testimony of Jurita Olvido was dispensed with after both parties agreed to stipulate on the following: (1) that she is a social welfare officer of the Department of Social Welfare and Development; (2) that she assisted the victim in filing a complaint due to her minority; and (3) that the due execution of her statement is admitted.[5]

For its part, the defense presented Margarita Salangsang as its lone witness. Accused-appellant opted not to testify.

The prosecution's version of the incident is succinctly summarized by the Office of the Solicitor General in its Appellee's Brief,[6] to wit:

> Private complainant [AAA]**,** is a fourteen (14) year old lass having been born on July 8, 1985. Appellant Mario Castro is the husband of [BBB], elder sister of [AAA].
>
> On November 11, 1999 at about 11:00 in the evening, appellant fetched [AAA] from her Aunt's house at PNR Compound, Taguig Metro Manila. He said that her elder sister, [BBB], collapsed and was in the clinic. Believing the story, [AAA] went with appellant.
>
> As events turned out, appellant brought [AAA] - - not in the clinic - - but near TEMIC Factory, which is an old abandoned building located at Western Bicutan, Taguig, Metro Manila. As they reached a dark narrow alley, appellant suddenly stopped and held [AAA]'s left arm. Startled and frightened, [AAA] screamed for help but nobody seemed to have heard the outcry. Wasting no time, appellant strangled her, with a threat to keep quiet lest he would kill her. [AAA] was cowed into silence. She felt helpless as she knew that appellant had killed someone before.
>
> Appellant hurriedly pulled [AAA] to the side of a building and told her to undress. When she refused, appellant undressed her, after

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[5] Records, p. 100.

[6] CA *Rollo*, pp. 67-69.

which, he undressed himself. [AAA] could not run away as appellant pressed her against the wall of the building and blocked her way. When both of them were already naked, appellant kissed her on the different parts of her body and, in an instant, forced his penis into her vagina until he satisfied his lust.

Once satiated, appellant told [AAA] to dress up and warned her not to tell anybody. Appellant initially brought her to the bus and jeepney terminal but he later changed his mind. He told [AAA] that they have to go to Kuya Manny's work place. Still overwhelmed with shock and fear, [AAA] could not resist. When appellant learned that Kuya Manny was not at work, he brought [AAA] again to the dark narrow alley beside Temic Factory. This time, however, they passed by a different route which is near "Pepsi."

As before, appellant asked [AAA] to undress. When she refused, he himself removed her clothes — including her intimate garments. He likewise undressed himself. He then kissed her on the different parts of her body and forced her down. All the while, she was so frightened and helpless. All she could do was to plead: "*Wag na po Kuya Mar*." Engulfed by his bestiality, appellant ignored her please; he took liberties on her body as he rammed his penis into her vagina. Again, he satisfied his lust.

Appellant eventually told [AAA] to dress up. He brought her to the terminal of the jeep and allowed her to go home.

When [AAA] reached her residence, she immediately took a bath. As she could not contain her grief and misery, she told her aunt [CCC] and her grandmother [DDD] that she was raped. After her relatives learned of the incident, they brought her to the Barangay Tanod and, later to Camp Crame for medical examination. They also proceeded to the Police Station located at the Municipal Hall of Taguig to give her statement. (Words in bracket ours)

On the other hand, the defense relied on the testimony of Margarita Salangsang, a lessee of accused-appellant's mother at Signal Village in Taguig. She testified that at around 9:30 in the evening on November 11, 1999, accused-appellant was in her house for her birthday celebration. Accused-appellant did not leave the house at any time from the moment he arrived at 9:30 in the evening until he finally left around midnight. She knew that accused-appellant went home straight after the party

because she even saw him at his house when she returned the pans she borrowed from accused-appellant's mother. Margarita declared that her house was located just at the back of accused-appellant's house.[7]

In a decision[8] dated September 29, 2004, the trial court rendered its decision convicting accused-appellant of the crime of rape, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Mario Castro, guilty beyond reasonable doubt of the crime of Rape committed under paragraph 1(a) of Article 266-A of the Revised Penal Code (as amended by R.A. 8353), and hereby sentences him to suffer the penalty of ***reclusion perpetua***.
>
> Accused Mario Castro is likewise ordered to indemnify private complainant, [AAA], the amount of fifty thousand pesos (₱50,000.00) as civil indemnity and the amount of fifty thousand pesos (₱50,000.00) by way of moral damages with cost *de oficio*.
>
> SO ORDERED.

Pursuant to *People v. Mateo*,[9] accused-appellant appealed his conviction to the CA *via* a notice of appeal on September 30, 2004,[10] whereat it was docketed as *CA-G.R. CR-HC No. 00126.*

On February 15, 2006, the CA upheld the conviction of accused-appellant and affirmed *in toto* the RTC decision.[11]

From the CA, the case was then elevated to this Court upon filing by accused-appellant of a notice of appeal on March 10, 2006.[12] In its Resolution[13] of August 9, 2006, the Court resolved

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[7] TSN, February 5, 2003, pp. 3-6.

[8] *Supra note* 2.

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

[10] CA *Rollo*, p. 27.

[11] *Supra note 1*.

[12] *Rollo*, p. 1.

[13] *Id.*, at 15.

to require the parties to submit their respective supplemental briefs, if they so desire. Both parties, however, manifested that they were dispensing with the filing of a supplemental brief as their arguments have already been substantially discussed in their respective briefs filed before the appellate court.[14]

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

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE INSTEAD OF THE CRIME OF ACTS OF LASCIVIOUSNESS.[15]

Insisting that the prosecution failed to prove his guilt beyond reasonable doubt for the crime of rape, accused-appellant assails the credibility of the complainant branding her testimony as highly improbable and contrary to common human experience. He contends that complainant did not particularly describe the details of the alleged rape as to whether she was forced to lie down or whether they were standing when he inserted a part of his organ into her vagina. Accused-appellant also asserts that complainant failed to categorically state that accused-appellant succeeded in inserting his penis into her vagina, thus undermining her allegation of consummated rape.

Accused-appellant's contentions relate to the credibility of the testimony of complainant. We have time and again said that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the opportunity to examine their demeanor on the witness stand.[16] Unless shown

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[14] *Id.,* at 21-22; 27-28.

[15] Appellant's Brief, CA *Rollo,* p. 42.

[16] *People v. Ulgasan*, G.R. Nos. 131824-26, July 11, 2000, 335 SCRA 441, 449.

that the trial court overlooked or misunderstood some facts or circumstances of weight and substance that could affect the result of the case, its findings on questions of facts will not be disturbed on appeal.[17] We have reviewed the record of the instant case and found nothing which would warrant a reversal of the trial court's findings.

Accused-appellant maintains that complainant failed to mention any pumping motion and whether she was standing or lying down when she was allegedly raped. These matters, however, have no bearing on the principal question of whether accused-appellant had carnal knowledge of the victim. Besides, contrary to appellant's contention, complainant testified in no uncertain terms during cross-examination that she did not willingly lie down but was forced to do so by accused-appellant:

ATTY. JANDUSAY:

Q. So are you saying Miss Witness, that you willingly laid down with the accused?

A. No, Ma'am.

Q. What did he do, did he force you down?

A Yes, Ma'am.[18]

Further, the complainant's narration of how accused-appellant perpetrated the sexual assault upon her was consistent, spontaneous and straightforward, thus:

PROS. CRISOLOGO:

Q While you were at the side of the building, what else happened, if any?
A He asked me to undress, Sir.

Q Did you undress, Madam witness?
A No, Sir.

Q. What else happened when you refused to undress?
A. He undressed me, Sir.

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[17] *Id.*, at 448.

[18] TSN, March 28, 2001, p. 31.

Q. Did you resist his act of undressing you, Madam Witness?
A. Yes, Sir.

Q. Did he succeed in undressing you?
A. Yes, Sir.

Q. When you said he undressed you, do you mean that he was able to undress everything including your underwear?
A. Yes, Sir.

Q. Would this mean that you were totally naked after he was able to undress you?
A. My panty was pulled down to the knee, Sir.

Q. And after he succeeded in undressing you, what else happened, if any?
A. He kissed me at different parts of my body, Sir.

Q. After kissing the different parts of your body, what else happened, if any?
A. He was forcing his organ to insert into my organ, Sir.

Q. Did he succeed, Madam Witness?
A. Not all, Sir.

Q. When you said not all somehow a part of his organ was inserted, would that be correct, Madam Witness?
A. Yes, Sir.[19]

Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, as in this case, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and have the offender apprehended and punished.[20]

Nor is there any question that accused-appellant in this case committed rape by means of threat and intimidation. Being 30 years old and the brother-in-law of complainant, accused-appellant exercised not only physical superiority, but also moral ascendancy

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[19] *Id.*, at 10-11.

[20] *People v. De Guzman*, G.R. Nos. 140333-34, December 11, 2001, 372 SCRA 95, 107-108.

over his 14-year old victim such that his threat to inflict physical harm on her effectively cowed her into submitting to his lustful designs. In fact, complainant was aware that accused-appellant had killed someone before[21] which all the more engendered fear in her — fear that if she did not yield to accused-appellant's demands, he would carry out his threat to kill her.

Accused-appellant argues that he cannot be held liable for consummated rape following the ruling in *People v. Campuhan*.[22] For this purpose, he cites the testimony of complainant that "not all" of accused-appellant's organ was inserted into her vagina.

The argument is misplaced. In *Campuhan*, it was held that the crime was merely attempted rape because all that the victim said in that case was that accused's penis "touched her organ but did not penetrate it."[23] Hence, this Court concluded:

> [The] testimony alone should dissipate the mist of confusion that enshrouds the question of whether rape in this case was consummated. It has foreclosed the possibility of Primo's penis penetrating her vagina, however slight. Crysthel made a categorical statement denying penetration. xxx. Nor can it be deduced that in trying to penetrate the victim's organ the penis of the accused touched the middle portion of her vagina and entered the labia of her pudendum as the prosecution failed to establish sufficiently that Primo made efforts to penetrate Crysthel. Corazon did not say, nay, not even hint that Primo's penis was erect or that he responded with an erection. On the contrary, Corazon even narrated that Primo had to hold his penis with his right hand, thus showing that he had yet to attain an erection to be able to penetrate his victim.[24]

But, in the case at bar, the above-quoted testimony of the complainant herself established the consummation of the crime of rape.

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[21] TSN, March 28, 2001, p. 32.

[22] G.R. No. 129433, March 30, 2000, 329 SCRA 270.

[23] *Id.*, at 284.

[24] *Id.*, at 284-285.

Clearly, complainant's statement that not all of accused-appellant's organ was inserted simply means that there was no full penetration. There can be no doubt, however, that there was at least a partial entry, so as to make the crime consummated rape. As we have said in unnumbered cases, full or deep penetration is not necessary to consummate sexual intercourse; it is enough that there is the slightest penetration of the male organ into the female sex organ.[25] The mere touching by the male organ of the labia of the pudendum of the woman's private part is sufficient to consummate rape.[26] It was therefore consummated rape which accused-appellant committed.

Accused-appellant likewise claims that the trial court erred in convicting him of the crime of consummated rape despite the prosecution's failure to present the testimony of the examining physician. We find accused-appellant's contention on this point untenable. The commission of rape against complainant cannot be negated simply because of the absence of the testimony of the doctor who examined the victim. It is well entrenched in our jurisprudence that a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime.[27] In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape.[28]

We are also constrained to agree with the appellate court's observation that there was nothing improbable and preposterous in complainant's testimony. Said the CA:

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[25] *People v. Puertollano*, G.R. No. 122423, June 17, 1999, 308 SCRA 356, 365.

[26] *People v. Mahinay*, G.R. No. 122485, February 1, 1999, 302 SCRA 455, 479.

[27] *People v. Baring, Jr.*, G.R. No. 137933, January 28, 2002, 374 SCRA 696, 705.

[28] *People v. Gabon*, G.R. No. 127003, November 16, 2001, 369 SCRA 160, 174.

This Court finds nothing incredible or fantastic in [AAA's] narration of the events surrounding the rape committed against her by accused-appellant Castro. The details of her story fail to show any telltale indications of falsehood, inconsistency or improbability, and were all perfectly consistent with the rape of a young innocent girl. Considering her relatively tender age and minority, it is well nigh inconceivable for her to have concocted such a serious accusation and brazenly impute such a crime to her own brother-in-law, if it were not true. The evidence on record is bereft of any showing, which would somehow indicate that the private complainant was induced by any ill-motive in filing the case against accused-appellant Castro.[29]

Accused-appellant's defense of alibi is unavailing. Margarita Salangsang, the lone defense witness, claimed that accused-appellant was in her house from 9:30-11:45 in the evening of November 11, 1999. However, this does not negate the possibility that he might be present at the TEMIC factory where the crime was committed, since Margarita's house and the TEMIC factory are both located within Taguig. In fact, Margarita herself declared that the distance between the two places can easily be negotiated by foot within ten (10) minutes and by tricycle within five (5) minutes.

For alibi to prosper, 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 at the time.[30] 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.[31] Clearly in this case, the physical impossibility of accused-appellant's presence at the scene of the crime on the date and time of its commission, has not been sufficiently established.

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

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

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

We, thus, sustain the conviction of accused-appellant for the crime of consummated simple rape under Article 266-A, paragraph 1(a) of the Revised Penal Code. The penalty of *reclusion perpetua* was likewise correctly imposed as the special qualifying circumstance of relationship had not been specifically alleged in the information. Under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353,[32] qualified rape is committed when, among others, "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." It is well-settled that these attendant circumstances of minority of the victim and her relationship to the offender are special qualifying circumstances which must be specifically alleged in the information and proved with certainty in order to warrant conviction for the crime of qualified rape and the imposition of the death penalty.[33]

In the present case, the information charging accused-appellant of the crime of rape alleged that the accused, "by means of force and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with his sister-in-law, [AAA], a minor, fourteen (14) years of age, against her will."[34] The prosecution was able to prove that at the time she was raped, complainant was only 14 years old, having been born on July 8, 1985, as evidenced by her birth certificate.[35] The prosecution likewise proved accused-appellant is the brother-in-law of complainant, being the husband of complainant's elder sister. Accused-appellant, therefore, is complainant's relative by affinity within the third civil degree.

However, we have previously held that if the offender is merely a relation — not a parent, ascendant, step-parent, or

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[32] Otherwise known as the Anti-Rape Law of 1997.

[33] *People v. Maglente*, G.R. Nos. 124559-66, April 30, 1999, 306 SCRA 546, 576.

[34] *Supra note* 4.

[35] Records, p. 162.

guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree."[36] Thus, in the instant case, the allegation that complainant is the sister-in-law of accused-appellant is not specific enough to satisfy the special qualifying circumstance of relationship. It is necessary to specifically allege that such relationship was by affinity within the third civil degree.[37] Consequently, due to the defect in the information charging accused-appellant of rape, he can only be held liable for simple rape and meted the penalty of *reclusion perpetua*.

Consistent with prevailing jurisprudence on simple rape, the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages were correctly awarded by the trial court.[38]

WHEREFORE, the decision dated February 15, 2006 of the CA in *CA-G.R. CR-HC No. 00126* is hereby *AFFIRMED*. Accused-appellant Mario Castro is found *GUILTY* beyond reasonable doubt of the crime of Simple Rape and sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay complainant, civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Chico-Nazario,[*] and *Velasco, Jr.,*[**] *JJ.,* concur.

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[36] *People v. Miñon*, G.R. Nos. 148397-400, July 7, 2004, 433 SCRA 671, 688.

[37] *Ibid*.

[38] *People v. Alvarez*, G.R. Nos. 140388-91, November 11, 2003, 415 SCRA 523, 538-539.

[*] Additional member in lieu of Justice Renato C. Corona as per Special Order No. 541.

[**] Additional member in lieu of Justice Adolfo S. Azcuna as per Special Order No. 542.

EN BANC

[G.R. No. 173473. December 17, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BETH TEMPORADA,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.—**To constitute illegal recruitment in large scale, three (3) elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. No. 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group.

2. **ID.; ILLEGAL RECRUITMENT; AN EMPLOYEE OF A COMPANY OR CORPORATION ENGAGED IN ILLEGAL RECRUITMENT MAY BE HELD LIABLE AS PRINCIPAL, TOGETHER WITH HIS EMPLOYER; CONDITION.—** An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.

3. **ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; THE CRIME IS *MALUM PROHIBITUM* AND NOT *MALUM IN SE*.—** [T]he defense of appellant that she was not aware of the illegal nature of the activities of her co-accused cannot be sustained. Besides, even assuming *arguendo* that appellant was indeed unaware of the illegal nature of said activities, the same is hardly a defense in the prosecution for illegal recruitment. Under *The Migrant Workers and Overseas Filipinos Act of 1995*, a special law, the crime of illegal recruitment in large scale is *malum prohibitum* and not malum in se. Thus, the criminal intent of the accused is not necessary and the fact alone that the accused violated the law warrants her conviction.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT BY AN APPELLATE COURT.— [F]indings of fact of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by an appellate court. The assessment of credibility of witnesses is a matter best left to the trial court because it is in the position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Further, there is no showing of any ill-motive on the part of the prosecution witnesses in testifying against appellant. Absent such improper motive, the presumption is that they were not so actuated and their testimony is entitled to full weight and credit.

5. CRIMINAL LAW; ILLEGAL RECRUITMENT; A PERSON CONVICTED FOR ILLEGAL RECRUITMENT UNDER THE LABOR CODE MAY, FOR THE SAME ACTS, BE CONVICTED FOR ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE; ESTAFA, ELEMENTS.— Well-settled is the rule that a person convicted for illegal recruitment under the Labor Code may, for the same acts, be separately convicted for *estafa* under Article 315, par. 2 (a) of the RPC. The elements of *estafa* are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation. The same evidence proving appellant's criminal liability for illegal recruitment also established her liability for *estafa*.

6. ID.; *ESTAFA* UNDER ARTICLE 315 OF THE REVISED PENAL CODE; PENALTY; HOW COMPUTED.— The prescribed penalty for *estafa* under Article 315, par. 2 (d) of the RPC, when the amount defrauded exceeds ₱22,000.00, is *prisión correccional* maximum to *prisión mayor* minimum. The minimum term is taken from the penalty next lower or anywhere within *prisión correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five *estafa* cases at 4 years and 2 months of *prisión correccional* since this is within the range of *prisión*

correccional minimum and medium. On the other hand, the maximum term is taken from the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum is not *prisión mayor* minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, *prisión correccional* maximum to *prisión mayor* minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of *prisión correccional* maximum to *prisión mayor* minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court. In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan* in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. The doctrine enunciated in *People v. Benemerito* insofar as the fraction of a year was utilized in computing the total incremental penalty should, thus, be modified.

7. ID.; PENALTIES; "PRESCRIBED PENALTY", "IMPOSABLE PENALTY" AND "PENALTY ACTUALLY IMPOSED", DEFINED.— The RPC provides for an initial penalty as a general prescription for the felonies defined therein which consists of a range of period of time. This is what is referred to as the "*prescribed penalty.*" For instance, under Article 249 of the RPC, the prescribed penalty for homicide is *reclusión temporal* which ranges from 12 years and 1 day to 20 years of imprisonment. Further, the Code provides for attending or modifying circumstances which when present in the commission of a felony affects the computation of the penalty to be imposed on a convict. This penalty, as thus modified, is referred to as the "*imposable penalty.*" In the case of homicide which is committed with one ordinary aggravating circumstance and no

mitigating circumstances, the imposable penalty under the RPC shall be the prescribed penalty in its maximum period. From this imposable penalty, the court chooses a single fixed penalty (also called a straight penalty) which is the "*penalty actually imposed*" on a convict, *i.e.*, the prison term he has to serve.

8. ID.; INDETERMINATE SENTENCE LAW; CREATES A PRISON TERM WHICH CONSISTS OF A MINIMUM AND MAXIMUM TERM CALLED THE INDETERMINATE SENTENCE.— With the *passage of the ISL,* the law created a prison term which consists of a minimum and maximum term called the indeterminate sentence. Section 1 of the ISL provides — SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x Thus, the maximum term is that which, in view of the attending circumstances, could be properly imposed under the RPC. x x x Upon the other hand, the minimum term shall be within the range of the penalty next lower to the prescribed penalty.

9. ID.; *ESTAFA* UNDER ARTICLE 315 OF THE REVISED PENAL CODE; INCREMENTAL PENALTY RULE; ANALOGOUS TO A MODIFYING CIRCUMSTANCE; EXPLAINED.— The question whether the incremental penalty rule is covered within the letter and spirit of "attending circumstances" under the ISL was answered in the affirmative by the Court in *Gabres* when it ruled therein that the incremental penalty rule is analogous to a modifying circumstance. Article 315 of the RPC pertinently provides — ART. 315. Swindling (*Estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: 1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such

cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be. . . . Under *Gabres, prisión correccional* maximum to *prisión mayor* minimum is the prescribed penalty for *estafa* when the amount defrauded exceeds ₱22,000.00. An amount defrauded in excess of ₱22,000.00 is effectively considered as a special aggravating circumstance in the sense that the penalty actually imposed shall be taken from the prescribed penalty in its maximum period without regard to any generic mitigating circumstances. Consequently, the penalty next lower in degree is still based on the prescribed penalty without in the meantime considering the effect of the amount defrauded in excess of ₱22,000.00. What is unique, however, with the afore-quoted provision is that when the amount defrauded is ₱32,000.00 or more, the prescribed penalty is not only imposed in its maximum period but there is imposed an incremental penalty of 1 year imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty which may be imposed shall not exceed 20 years. This incremental penalty rule is a special rule applicable to *estafa* and theft. In the case of *estafa*, the incremental penalty is added to the maximum period of the prescribed penalty (or to anywhere from 6 years, 8 months and 21 days to 8 years) at the discretion of the court, in order to arrive at the penalty actually imposed (*i.e.*, the maximum term, within the context of the ISL). This unique characteristic of the incremental penalty rule does not pose any obstacle to interpreting it as analogous to a modifying circumstance, and, hence, falling within the letter and spirit of "attending circumstances" for purposes of the application of the ISL. Under the wording of the ISL, "attending circumstances" may be reasonably interpreted as referring to such circumstances that are applied in conjunction with certain rules in the Code in order to determine the penalty to be actually imposed based on the prescribed penalty of the Code for the offense. The incremental penalty rule substantially meets this standard. The circumstance is the amount defrauded in excess of ₱22,000.00 and the incremental penalty rule is utilized to fix the penalty actually imposed. At its core, the incremental penalty rule is merely a mathematical formula for computing the penalty to be actually imposed using the prescribed penalty as starting

point. Thus, it serves the same function of determining the penalty actually imposed as the modifying circumstances under Articles 13, 14, and 160 of the RPC, although the manner by which the former accomplishes this function differs with the latter. For this reason, the incremental penalty rule may be considered as merely analogous to modifying circumstances. Besides, in case of doubt as to whether the incremental penalty rule falls within the scope of "attending circumstances" under the ISL, *the doubt should be resolved in favor of inclusion* because this interpretation is more favorable to the accused following the time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused.

10. ID.; ID.; ID.; ONE-DEGREE DIFFERENCE RULE; ELUCIDATED.— As a general rule, the application of modifying circumstances, the majority being generic mitigating and ordinary aggravating circumstances, does not result to a maximum term fixed beyond the prescribed penalty. At most, the maximum term is taken from the prescribed penalty in its maximum period. Since the maximum term is taken from the prescribed penalty and the minimum term is taken from the next lower penalty, then, in this limited sense, the difference would naturally be only one degree. Concretely, in the case of homicide with one ordinary aggravating circumstance, the maximum term is taken from *reclusión temporal* in its maximum period which is within the prescribed penalty of *reclusión temporal*, while the minimum term is taken from *prisión mayor* which is the penalty next lower to *reclusión temporal*; hence, the one-degree difference observed by the dissent. In comparison, under the incremental penalty rule, the maximum term can exceed the prescribed penalty. Indeed, at its extreme, the maximum term can be as high as 20 years of *reclusión temporal* while the prescribed penalty remains at *prisión correccional* maximum to *prisión mayor* minimum, hence, the penalty next lower to the prescribed penalty from which the minimum term is taken remains at anywhere within *prisión correccional* minimum and medium, or from 6 months and 1 day to 4 years and 2 months. In this sense, the incremental penalty rule deviates from the afore-stated general rule. However, it is one thing to say that, *generally*, the penalty from which the minimum term is taken is only one degree away

from the penalty from which the maximum term is taken, and completely another thing to claim that the penalty from which the minimum term is taken *should* only be one degree away from the penalty from which the maximum term is taken. The one-degree difference is merely the result of a *general observation* from the application of generic mitigating and ordinary aggravating circumstances in the RPC in relation to the ISL. *Nowhere* does the ISL refer to the one-degree difference as an essential requisite of an "attending circumstance". If the application of the incremental penalty rule deviates from the one-degree difference, this only means that the law itself has provided for an exception thereto. Verily, the one-degree difference is a *mere consequence* of the generic mitigating and ordinary aggravating circumstances created by the legislature.

11. ID.; PENAL STATUTES; AS BETWEEN TWO REASONABLE BUT CONTRADICTORY CONSTRUCTIONS, THE ONE MORE FAVORABLE TO THE ACCUSED SHOULD BE UPHELD; RATIONALE.— [I]n construing penal statutes, as between two reasonable but contradictory constructions, the one more favorable to the accused should be upheld, which in this case is *Gabres*. The reason for this rule is elucidated in an eminent treatise on statutory construction in this wise: It is an ancient rule of statutory construction that penal statutes should be strictly construed against the government or parties seeking to enforce statutory penalties and *in favor of the persons on whom penalties are sought to be imposed.* This simply means that words are given their ordinary meaning and that *any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute*. This canon of interpretation has been accorded the status of a constitutional rule under principles of due process, not subject to abrogation by statute. The rule that penal statutes should be strictly construed has several justifications based on a concern for the rights and freedoms of accused individuals. Strict construction can assure fairness when courts understand it to mean that penal statutes must give a clear and unequivocal warning, in language people generally understand, about actions that would result in liability *and the nature of potential penalties*. x x x Additionally, strict construction protects the individual against arbitrary discretion by officials and judges.

As one judge noted: "the courts should be particularly careful that the bulwarks of liberty are not overthrown, in order to reach an offender who is, but perhaps ought not to be, sheltered behind them." *But also, for a court to enforce a penalty where the legislature has not clearly and unequivocally prescribed it could result in judicial usurpation of the legislative function.* One court has noted that the reason for the rule is "to guard against the creation, by judicial construction, of criminal offenses not within the contemplation of the legislature". Thus the rule requires that before a person can be punished his case must be plainly and unmistakably within the statute sought to be applied. And, so, where a statute is open to more than one interpretation, it is strictly construed against the state. Courts further rationalize this application of the rule of strict construction on the ground that it was not the defendant in the criminal action who caused ambiguity in the statute. Along these same lines, courts also assert that since the state makes the laws, they should be most strongly construed against it. Thus, in one case, where the statute was ambiguous and permitted two reasonable interpretations, the construction which would impose a less severe penalty was adopted.

CORONA, *J., separate opinion*:

1. CRIMINAL LAW; CONSTRUCTION OF PENAL LAWS; IN *DUBIO PRO REO* PRINCIPLE AND RULE OF LENITY; EXPLAINED.— The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. In *dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt. Intimately intertwined with the in *dubio pro reo* principle is the rule of lenity. It is the doctrine that "a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment". Lenity becomes all the more appropriate when this case is viewed through the lens of the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness". Since the goal of the

Indeterminate Sentence Law is to look kindly on the accused, the Court should adopt an application or interpretation that is more favorable to the accused.

2. ID.; ESTAFA; INCREMENTAL PENALTY IN ESTAFA VIS-À-VIS THE INDETERMINATE SENTENCE LAW; SCHOOLS OF THOUGHT.— Jurisprudence shows that there are two schools of thought on the incremental penalty in *estafa vis-à-vis* the Indeterminate Sentence Law. Under the first school of thought, the *minimum term is fixed at prision correccional* while the maximum term can reach up to *reclusion temporal*. This is the general interpretation. It was resorted to in *People v. Pabalan*, *People v. Benemerito*, *People v. Gabres* and in a string of cases. On the other hand, under the second school of thought, *the minimum term is one degree away from the maximum term and therefore varies as the amount of the thing stolen or embezzled rises or falls*. It is the line of jurisprudence that follows *People v. De la Cruz*. Among the cases of this genre are *People v. Romero*, *People v. Dinglasan* and *Salazar v. People*.

3. ID.; INDETERMINATE SENTENCE LAW; INDETERMINATE SENTENCE; HOW DETERMINED. — Under the Indeterminate Sentence Law, in imposing a sentence, the court must determine two penalties composed of the "maximum" and "minimum" terms, instead of imposing a single fixed penalty. Hence, the indeterminate sentence is composed of a maximum term taken from the penalty imposable under the Revised Penal Code and a minimum term taken from the penalty next lower to that fixed in the said Code. The maximum term corresponds to "that which, in view of the attending circumstances, could be properly imposed under the rules of the [Revised Penal] Code." Thus, "attending circumstances" (such as mitigating, aggravating and other relevant circumstances) that may modify the imposable penalty applying the rules of the Revised Penal Code is considered in determining the maximum term. Stated otherwise, the maximum term is arrived at after taking into consideration the effects of attendant modifying circumstances. On the other hand, the minimum term "shall be within the range of the penalty next lower to that prescribed by the [Revised Penal] Code for the offense". It is based on the penalty prescribed by the Revised Penal Code for the offense without considering in the meantime the modifying circumstances.

4. ID.; ESTAFA UNDER ARTICLE 315 OF THE REVISED PENAL CODE; PENALTY; EXPLAINED.— The penalty prescribed by Article 315 of the Revised Penal Code for the felony of estafa (except estafa under Article 315 (2) (d)) is *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over ₱12,000 but does not exceed ₱22,000. If it exceeds ₱22,000, the penalty provided in this paragraph shall be imposed in its maximum period. Moreover, where the amount embezzled is more than ₱22,000, an incremental penalty of one year shall be added for every additional ₱10,000. Thus, the Revised Penal Code imposes *prision correccional* in its maximum period to *prision mayor* in its minimum period (or a period of four years, two months and one day to eight years) if the amount of the fraud is more than ₱12,000 but not more than ₱22,000. If it exceeds ₱22,000, the penalty is imposed in its maximum period (or a period of six years, 8 months and 21 days to eight years) with an incremental penalty of one year for each additional ₱10,000 subject to the limitation that the total penalty which may be imposed shall in no case exceed 20 years. Strictly speaking, the circumstance that the amount misappropriated by the offender is more than ₱22,000 is a qualifying circumstance. In *People v. Bayot*, this Court defined a qualifying circumstance as a circumstance the effect of which is "not only to give the crime committed its proper and exclusive name but also to place the author thereof in such a situation as to deserve no other penalty than that especially prescribed for said crime". Applying the definition to estafa where the amount embezzled is more than ₱22,000, the amount involved *ipso jure* places the offender in such a situation as to deserve no other penalty than the imposition of the penalty in its maximum period plus incremental penalty, if warranted. In other words, if the amount involved is more than ₱22,000, then the offender shall be sentenced to suffer the maximum period of the prescribed penalty with an incremental penalty of one year per additional ₱10,000. However, *People v. Gabres* considered the circumstance that more than ₱22,000 was involved as a generic modifying circumstance which is material only in the determination of the maximum term, not of the minimum term. x x x If the circumstance that more than ₱22,000 was involved is considered as a qualifying circumstance, the penalty prescribed by the Revised Penal Code for it will be the

maximum period of *prision correccional* in its maximum period to *prision mayor* in its minimum period. This has a duration of six years, 8 months and 21 days to eight years. The penalty next lower (which will correspond to the minimum penalty of the indeterminate sentence) is the medium period of *prision correccional* in its maximum period to *prision mayor* in its minimum period, which has a duration of five years, five months and 11 days to six years, eight months and 20 days. If the circumstance is considered simply as a modifying circumstance (as in *Gabres*), it will be disregarded in determining the minimum term of the indeterminate sentence. The starting point will be *prision correccional* maximum to *prision mayor* minimum and the penalty next lower will then be *prision correccional* in its minimum to medium periods, which has a duration of six months and one day to four years and two months. From the foregoing, it is more favorable to the accused if the circumstance (that more than ₱22,000 was involved) is to be considered as a modifying circumstance, not as a qualifying circumstance. Hence, I submit that the *Gabres* rule is preferable. On the contrary, the second school of thought is invariably prejudicial to the accused. By fixing the minimum term of the indeterminate sentence to one degree away from the maximum term, the minimum term will always be longer than *prision correccional* in its minimum to medium periods. Worse, the circumstance (that more than ₱22,000 was embezzled) is not a modifying circumstance but a part of the penalty, if adopted, will mean that the minimum term of the indeterminate sentence will never be lower than the medium period of *prision correccional* in its maximum period to *prision mayor* in its minimum period, the penalty next lower to the maximum period of *prision correccional* in its maximum period to *prision mayor* in its minimum period.

5. ID.; CONSTRUCTION OF PENAL LAWS; DUBIO PRO REO PRINCIPLE AND RULE OF LENTITY; VIOLATED WHEN FOR PURPOSES OF THE INDETERMINATE SENTENCE LAW, THE CONCEPT OF "MODIFYING CIRCUMSTANCE" IS LIMITED TO EITHER A MITIGATING OR AGGRAVATING CIRCUMSTANCE LISTED UNDER ARTICLES 13 AND 14 OF THE REVISED PENAL CODE.— The primary defect of the so-called second school of thought is that it contradicts the in *dubio pro reo*

principle. It also violates the lenity rule. Instead, it advocates a stricter interpretation with harsher effects on the accused. In particular, compared to the first school of thought, it lengthens rather than shortens the penalty that may be imposed on the accused. Seen in its proper context, the second school of thought is contrary to the avowed purpose of the law that it purportedly seeks to promote, the Indeterminate Sentence Law. The second school of thought limits the concept of "modifying circumstance" to either a mitigating or aggravating circumstance listed under Articles 13 and 14 of the Revised Penal Code. It contends that the respective enumerations under the said provisions are exclusive and all other circumstances not included therein were intentionally omitted by the legislature. It further asserts that, even assuming that the circumstance that more than ₱22,000 was embezzled may be deemed as analogous to aggravating circumstances under Article 14, the said circumstance cannot be considered as an aggravating circumstance because it is only in mitigating circumstances that analogous circumstances are allowed and recognized. The second school of thought then insists that, since the circumstance that more than ₱22,000 was involved is not among those listed under Article 14, the said circumstance is not a modifying circumstance for purposes of the Indeterminate Sentence Law. The second school of thought therefore strictly construes the term "attending circumstances" against the accused. It refuses to recognize anything that is not expressed, takes the language used in its exact meaning and admits no equitable consideration.

6. ID.; ID.; WORDS OR PHRASES IN STATUTES, HOW INTERPRETED.— [L]aws must receive sensible interpretation to promote the ends for which they are enacted. The meaning of a word or phrase used in a statute may be qualified by the purpose which induced the legislature to enact the statute. The purpose may indicate whether to give a word or phrase a restricted or expansive meaning. In construing a word or phrase, the court should adopt the interpretation that best serves the manifest purpose of the statute or promotes or realizes its object. Where the language of the statute is fairly susceptible to two or more constructions, that which will most tend to give effect to the manifest intent of the lawmaker and promote the object for which the statute was enacted should be adopted.

Taken in conjunction with the lenity rule, a doubtful provision of a law that seeks to alleviate the effects of incarceration ought to be given an interpretation that affords lenient treatment to the accused.

7. ID.; INDETERMINATE SENTENCE LAW; BEING PENAL IN NATURE, IT MUST RECEIVE AN INTERPRETATION THAT BENEFITS THE ACCUSED.— The Indeterminate Sentence Law is intended to favor the accused, particularly to shorten his term of imprisonment. The reduction of his period of incarceration reasonably helps "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness". The law, being penal in character, must receive an interpretation that benefits the accused. This Court already ruled that "in cases where the application of the law on indeterminate sentence would be unfavorable to the accused, resulting in the lengthening of his prison sentence, said law on indeterminate sentence should not be applied." In the same vein, if an interpretation of the Indeterminate Sentence Law is unfavorable to the accused and will work to increase the term of his imprisonment, that interpretation should not be adopted. It is also for this reason that the claim that the power of this Court to lighten the penalty of lesser crimes carries with it the responsibility to impose a greater penalty for grave penalties is not only wrong but also dangerous. Nowhere does the Indeterminate Sentence Law prescribe that the minimum term of the penalty be no farther than one degree away from the maximum term. Thus, while it may be true that the minimum term of the penalty in an indeterminate sentence is generally one degree away from the maximum term, the law does not mandate that its application be rigorously and narrowly limited to that situation.

PUNO*, C.J., dissenting opinion*:

1. CRIMINAL LAW; INDETERMINATE SENTENCE LAW; AN INDETERMINATE SENTENCE SHALL BE COMPOSED OF A MAXIMUM AND A MINIMUM TERM.— In lieu of a straight penalty, the Indeterminate Sentence Law (ISL) provides for guidelines for the determination of an indeterminate sentence, which shall be composed of a maximum and a minimum; thus, for crimes punishable under the Revised

Penal Code (RPC), Section 1 of the ISL provides that "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the *minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense."*

2. ID.; ESTAFA UNDER ARTICLE 315 OF THE REVISED PENAL CODE; PENALTY; INTERPRETATIONS.— The penalty prescribed by the Code for the crime of *estafa* is worded as follows: Article 315. Swindling (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and *if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos*; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. The problematic portion of Section 1 of the ISL in relation to the above-quoted provision is the phrase "prescribed by the Code", which is essential in determining the range within which the minimum of the indeterminate sentence can be pegged. As can be observed from Article 315, the penalty prescribed for *estafa* in cases involving amounts exceeding ₱22,000 may be interpreted in two ways: first, that the term "penalty prescribed" in Section 1 of the ISL merely refers to the phrase "*the penalty provided in this paragraph"*, which refers to "*prision correccional* in its maximum period to *prision mayor* in its minimum period", without as yet considering the addition of one year for each additional ₱10,000 involved; or second, that the "penalty prescribed" denotes the whole phrase "*the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos."* In essence, the existing jurisprudence which the *ponencia* staunchly defended and upheld, adheres to the first

interpretation. Under this view, since the "penalty prescribed" by the RPC for *estafa* is *prision correccional* maximum to *prision mayor* minimum, the range of the penalty within which the minimum of the indeterminate sentence would be determined would be that degree next lower thereto, or *prision correccional* in its minimum to medium periods. Accordingly, the incremental penalty or the additional number of years for the corresponding increase in the amounts involved in the fraud is merely considered as a "modifying circumstance" which is considered in the determination of the maximum-but not the minimum-of the indeterminate sentence. Hence, the range within which the minimum of the indeterminate sentence under the current computation can be pegged is permanently set at *prision correccional* in its minimum to medium periods. On the other hand, the second interpretation provides that the minimum of the indeterminate sentence should be arrived at by descending one degree down the scale from the principal penalty, after factoring in the incremental penalty into the same. In other words, for purposes of determining the minimum of the indeterminate sentence, the so-called "prescribed penalty" for frauds involving amounts exceeding ₱22,000 denotes a penalty which has already been computed according to the number of years in excess of ₱22,000. Necessarily, the distance between the maximum and the minimum shall always be only one degree away. I find that this second interpretation is more in keeping with the intent and letter of the ISL and the RPC.

3. ID.; ID.; INCREMENTAL PENALTY; SHOULD BE INCLUDED IN THE PENALTY PRESCRIBED FOR ESTAFA FOR PURPOSES OF DETERMINING THE MINIMUM OF THE INDETERMINATE SENTENCE.— In our jurisdiction, "incremental penalty" as used in relation to crimes against property now refers to the phrase "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". I submit that for purposes of determining the minimum of the indeterminate sentence, the "penalty prescribed" for *estafa* should include the incremental penalty, since the penalty for *estafa*, as that in theft, hinges on the value or amount involved.

4. ID.; ID.; ID.; NOT A MODIFYING CIRCUMSTANCE.— A plain reading of the provision on *estafa* yields the conclusion

that the law, as in the crime of theft, intended a graduated penalty, *viz.:* for *estafa* involving the amount of ₱200 and below, the penalty shall be *arresto mayor* in its medium and maximum periods; for amounts over ₱200 but not exceeding ₱6,000, *arresto mayor* in its maximum period to *prision correccional* in its minimum period; for amounts over ₱6,000 but not exceeding ₱12,000, *prision correccional* in its minimum and medium periods; and finally, the penalty subject of the controversy herein, "*prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over ₱12,000 but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years". Verily, the manner in which Article 315 was crafted lends an insight into the intention of the RPC, which is to ensure that the penalty for the crime committed be commensurate to the amount of the fraud. Hence, I submit that the so-called incremental penalty is exactly that-an incremental penalty-and not a modifying circumstance. Short of the RPC enumerating all the gradations of the penalty for each amount that might be involved, the Code merely provided a formula in order to arrive at the prescribed penalty. Nonetheless, a prescribed penalty had been intended, and that prescribed penalty can still be easily derived after a mechanical application of the given formula.

5. ID.; ID.; THE PENALTY OF PRISION CORRECTIONAL MAXIMUM TO PRISION MAYOR MINIMUM PROVIDED IN THE REVISED PENAL CODE SHOULD BE THE BASIS FOR DETERMINING THE MINIMUM OF THE INDETERMINATE SENTENCE. – To revisit Article 315: Article 315. Swindling (*estafa*).— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; *but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection*

with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be. As can be seen, the RPC attempts to limit the penalty prescribed, *i.e.*, the computed penalty, to a maximum of twenty years. Furthermore, the computed penalty is mandated to be termed *prision mayor* or *reclusion temporal*, as the case may be, in keeping with the statement of the prescribed penalties for frauds of lower amounts. Had the law intended the incremental penalty to be a modifying circumstance, there would have been no sense in doing so. The more plausible explanation, therefore, is that the RPC is prescribing a penalty for frauds exceeding ₱22,000. On this note, therefore, I am in agreement with the view that the penalty of *prision correccional* maximum to *prision mayor* minimum provided in the Code is merely the initial prescription or the starting point — but not the complete penalty — which should be the basis for determining the range of "the penalty next lower than that prescribed by the Code" in order to determine the minimum of the indeterminate sentence.

6. ID.; PENAL LAWS; CONSTRUCTION IN FAVOR OF THE ACCUSED, NOT EXTENDED TO SUBJECTS OF THE INDETERMINATE SENTENCE LAW AS THEY ARE ALREADY CONVICTED FELONS.— It must be recalled that the construction in favor of the accused is rooted in the presumption of innocence which stems from the constitutional right to due process. Hence, the strict construction against the government as regards penal laws pertains to cases in which the accused stands to be deprived of either life, liberty or property. In the instant case, I find that the application of this rule is somewhat strained. For one, the threat of losing life, liberty or property without due process of law is more apparent than real, because the subjects of the ISL are no longer merely accused individuals. On the contrary, they are already convicted felons whose guilt had already been proven beyond reasonable doubt. Hence, I do not see how they can still be accorded the presumption of innocence.

7. ID.; INDETERMINATE SENTENCE LAW; MERELY ASSUMED AS A PENAL LAW; EFFECT.— I am in doubt as to the characterization of the ISL as a penal law that could warrant a presumption of innocence for the accused. A penal

law is an act of the legislature that prohibits certain acts and establishes penalties for its violations. A closer look at the ISL, however, reveals that it does not make any act punishable. Its complete title is telling: "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". Moreover, the classification of the ISL as penal was made arbitrarily and without clear legal basis. *People v. Nang Kay*, which cited the Corpus Juris Secundum, points to the U.S. case of *State v. Groos* as its authority for saying that the ISL is a penal statute. A perusal of the said U.S. case reveals, however, that the penal character of the ISL was not put into issue in that case, and that it was merely assumed that the ISL is a penal law. Accordingly, I submit that the presumption of innocence could not be used in granting leniency in the computation of the minimum in the ISL.

AZCUNA, *J., separate dissenting opinion*:

CRIMINAL LAW; ESTAFA UNDER ARTICLE 315 OF THE REVISED PENAL CODE; PENALTY.— The penalty for estafa is a unique one, in a class by itself. The penalty prescribed by law depends on the amount involved. If it does not exceed ₱22,000, it is the penalty stated in par. 2 (a) of Art. 315 of the Revised Penal Code, *i.e., prision correccional* maximum to *prision mayor* minimum. If it exceeds ₱22,000, it is that penalty plus one year for every ₱10,000, but in no case more than 20 years. Then the law states that in that event the penalty should be "termed" *prision mayor* or *reclusion temporal*, "as the case may be." Accordingly, if the amount involved is, say, ₱500 Million, the penalty prescribed by law is *reclusion temporal*. Hence, the penalty one degree lower than that is *prision mayor* and it is within this one-degree lower penalty, *i.e., prision mayor*, that the minimum of the indeterminate sentence is to be fixed.

VELASCO, *J., dissenting opinion*:

1. CRIMINAL LAW; ESTAFA;PENALTY; PRINCIPLE OF PROPORTIONALITY BETWEEN THE OFFENSE COMMITTED AND THE PENALTY IMPOSED, APPLIED

THEREIN; PENALTY FOR ESTAFA MUST ALWAYS BE COMMENSURATE WITH THE AMOUNT DEFRAUDED.— I submit that principle of proportionality between the offense committed and the penalty imposed finds application in determining the penalty for the crime of estafa. The penalty for estafa must always be commensurate with the amount defrauded. If the concept of proportionality between the offense committed and the sanction imposed is not strictly adhered to, then unfairness and injustice will inevitably result.

2. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; A LAW SHOULD NOT BE SO CONSTRUED AS TO PRODUCE AN ABSURD RESULT.— It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result. The law does not intend an absurdity or that an absurd consequence shall flow from its enactment. If the words of the statute are susceptible of more than one meaning, the one that has a logical construction should be adopted over the one that will produce an absurdity. Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.

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

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8042 (THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT; DEFINED.— Illegal recruitment, as defined under R.A. No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, pertains to "any recruitment activities, including the prohibited practices enumerated under Article 34 of the Labor Code, to be undertaken by non-licensees or non-holders of authority". The term "recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, including 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 shall be deemed engaged in recruitment and placement.

2. ID.; ID.; ID.; WHEN COMMITED BY A SYNDICATE OR IN LARGE SCALE.— The law imposes a higher penalty when the illegal recruitment is committed by a syndicate or in large scale as it is considered an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme. It is deemed committed in large scale if committed against three or more persons individually or as a group.

3. CRIMINAL LAW; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS. — The essential elements of the crime of illegal recruitment in large scale are as follows: (1) the accused engages in the recruitment and placement of workers, as defined under Article 13(b) or in any prohibited activities under Article 34 of the Labor Code; (2) the accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, whether locally or overseas; and (3) the accused commits the same against three (3) or more persons, individually or as a group.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CALIBRATION OF THE TESTIMONIES OF WITNESSES IS A MATTER BEST LEFT TO THE DISCRETION OF THE TRIAL COURT.— Time and again, this Court has ruled that the calibration of the testimonies of the witnesses is a matter best left to the discretion of the trial court. For the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.

5. CRIMINAL LAW; ESTAFA; A PERSON MAY BE CHARGED WITH AND CONVICTED SEPARATELY OF ILLEGAL RECRUITMENT UNDER THE LABOR CODE AND

ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE.— The rule is well-entrenched in this jurisdiction that a person may be charged with and convicted separately of illegal recruitment under the Labor Code; and *estafa* under the Revised Penal Code (RPC), Article 315, paragraph 2 (a). The Court, through the *ponencia* of Mr. Justice Leonardo Quisumbing in *People v. Yabut*, aptly observed: In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and *estafa* under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while *estafa* is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for *estafa* under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of *estafa* will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and *vice versa*.

6. ID.; ESTAFA UNDER ARTICLE 315 OF THE REVISED PENAL CODE; PENALTY; EXPLAINED.— In *People v. Pabalan*, decided on September 30, 1996, the Court declared for the first time that the maximum penalty in *estafa* shall be taken from the maximum period of the basic penalty as stated in Article 315 of the RPC, as augmented by the additional years of imprisonment (one year for each additional ₱10,000.00 in excess of ₱22,000.00), while the *minimum term* of the indeterminate sentence shall be within the range of the penalty next lower in degree to that provided by law *without* considering the incremental penalty for the amounts in excess of ₱22,000.00. That penalty immediately lower in degree is *prision correccional* in its minimum and maximum periods, with a duration of six months and one day to four years and two months. x x x In *People v. Benemerito*, a slightly different formulation for the calibration of the penalty in *estafa* was prescribed. x x x It should be noted, however, that the said formula in Benemerito is similar to that in Pabalan in the sense that the *minimum term* of the indeterminate sentence *remains stationary* at

prision correccional while the maximum term can reach up to *reclusion temporal*. But no sufficient rational explanation is given in both cases why the more established rules on penalties have to be disregarded in the process of fixing the minimum term. *People v. Gabres* was the first to refer to the incremental penalty in *estafa* as a *modifying* circumstance. x x x *Gabres*, taking a cue from *Pabalan* and *Benemerito,* added to the foundation for the prevailing view that the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the RPC, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense; that the penalty next lower should be based on the penalty prescribed by the Code for the offense, *without first considering any modifying circumstance attendant to the commission of the crime; that the modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence;* that in computing the penalty for *estafa,* the fact that the amounts involved exceed ₱22,000.00 *should not be considered in the initial determination of the indeterminate penalty*; that instead the matter should be taken as *analogous to modifying circumstances* in the imposition of the maximum term of the full indeterminate sentence. In justifying this interpretation of the provisions of the RPC on the penalty in *estafa vis-a-vis* the application of the ISL, the Court theorized that this is in accord with the rule that penal laws should be construed in favor of the accused. *Since the penalty prescribed by law for estafa is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional in its minimum to medium periods.* This interpretation was reiterated in, among others, *People v. Hernando, People v. Menil*, *People v. Logan*, *People v. Gallardo and Garcia v. People*. To my mind, this interpretation needs revisiting. It should be reconciled with (1) Article 315; (2) Article 14 of the RPC; (3) the ISL; (4) the basic rules of statutory construction; and (5) the rationalization of penalties.

7. ID.; ID.; ID.; THE PENALTY FOR *ESTAFA* HINGES ON THE VALUE OR AMOUNT INVOLVED.— *Pabalan*, *Benemerito*, and *Gabres* collectively state that the penalty prescribed by the Code for *estafa* is *prision correccional*

maximum to *prision mayor* minimum. That is not true. The said penalty is only the *initial* prescription, the starting point. In truth, the *penalty for estafa*, as in theft, *hinges on the value or amount involved*. The penalty is determined by the amount of the actual damage suffered, or the potential one, if the act has not been consummated. It is the value of the damage or the prejudice that is the basis for the determination of penalty. As in theft, the penalty is graduated according to the value. x x x Verily, Article 315 prescribes the penalty of *prision correccional* maximum to *prision mayor* minimum if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00. Beyond that, the penalty varies. It may be *prision mayor* or *reclusion temporal*, if the amount exceeds ₱22,000.00 as to call for many additional years — one (1) year for each additional ₱10,000.00.

8. ID.; ID.; ID.; INCREMENTAL PENALTY; NOT A MERE MODIFYING CIRCUMSTANCE.— *Pabalan, Benemerito,* and *Gabres*, as well as those that came after them, considered the incremental penalty in *estafa* as a mere modifying circumstance. Said cases projected that the incremental penalty of one year for each ₱10,000.00 in excess of ₱22,000.00 is not part of the penalty but is akin to a circumstance aggravating the felony. To consider the additional amount in excess of ₱22,000.00 as mere modifying circumstance or one analogous to it is baseless. A modifying circumstance is either mitigating or aggravating. The enumeration of the aggravating circumstances under Article 14 of the RPC is *exclusive*, as opposed to the enumeration in Article 13 of the same Code regarding mitigating circumstances where there is a specific paragraph (paragraph 10) providing for analogous circumstances. *Casus omissus pro omisso habendus est*. A case omitted is intentionally omitted. The view that the incremental penalty in *estafa* is a mere modifying circumstance or analogous to it runs afoul of Article 14 of the Code that does not so provide. Article 14 is clear and needs no expansion. There is a view that the "attending circumstances" mentioned in Section 1 of the ISL are not limited to those modifying circumstances falling within the scope of Articles 13 and 14 of the RPC. *Quasi-recidivism* is cited as an example where the penalty next lower in degree is computed based on the prescribed penalty and not the prescribed penalty in its maximum period. The citation is

inappropriate. It should not be forgotten that *quasi-recidivism* is a special *aggravating circumstance*. Thus, it is *sui genesis*: a class of its own.

9. ID.; INDETERMINATE SENTENCE LAW; RULES.— Section 1 of Act No. 4103, the ISL, as amended by Act No. 4225, declares: SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the *minimum* of which shall be within the range of the penalty *next lower to that prescribed by the Code for the offense*; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. This section may be subdivided into four parts or sub-rules, to wit: (1) ISL applies mandatorily if the maximum prison sentence *exceeds* one year, whether the offense is punished by the RPC (or its amendments) or any other law (special law); (2) The sentence has a minimum term and a maximum term; (3) If the crime is punished by the RPC, the *maximum term* shall be the *proper penalty* under the Code *in view of the attending* mitigating/aggravating) *circumstances* and the *minimum term* shall be within the range of the penalty *next lower* than that prescribed by the Code; (4) If the offense is punished by any other law (special law), the maximum term shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same law. By jurisprudence, the basis of application of ISL is the penalty actually imposed. Thus, even in capital offenses, if the sentence is not death or life imprisonment/*reclusion perpetua* because of a privileged mitigating circumstance, the ISL applies. The minimum term shall be within the range of the *penalty next lower* than that prescribed by the Code for the offense. In crafting the minimum term, the court cannot impose a minimum penalty that is in the same period and the same degree as the maximum penalty. This is because the ISL expressly mandates that it "shall be within the range of the *penalty next lower* to that prescribed by the Code for the offense."

10. ID.; ID.; INDETERMINATE SENTENCE; MINIMUM TERM; THE PHRASE "PENALTY NEXT LOWER IN DEGREE," CONSTRUED.— In interpreting what is the "penalty next lower", the Court, in *People v. Co-Pao*, held that the penalty next lower in degree consists in the period next following within the same penalty, if any, otherwise within the penalty following in the scale prescribed in Article 70. The Court would later on be more emphatic in *People v. Haloot*, where it ruled that "the *penalty next lower than another should begin where the latter ends* because otherwise, *if it were to skip intermediate ones, it would be lower but not next lower in degree."*

11. ID.; ID.; ID.; ID.; HOW COMPUTED; THE DISTANCE BETWEEN THE MAXIMUM AND THE MINIMUM SHOULD ALWAYS BE ONLY ONE DEGREE.— *The minimum of the indeterminate sentence should be arrived at by descending one degree down the scale from the penalty actually imposed. In other words, the distance between the maximum and the minimum should always be only one degree.* In *People v. Ducosin*, the Court had occasion to rule that the minimum of the indeterminate sentence is arrived at by descending one degree lower from the penalty prescribed by law for the felony. The doctrine was reiterated with greater firmness in *People v. Alba, Lontoc v. People*, *People v. Yco*, *Basan v. People*, and *Larobis v. Court of Appeals*. In computing the indeterminate sentence for crimes punished under the RPC, the *regular formula* is to determine first the maximum term, after considering all the attending circumstances. Then, the minimum term is arrived at by going one degree down the scale.

12. ID.; ARTICLE 315 OF THE REVISED PENAL CODE; NEEDS NO INTERPRETATION AS ITS LANGUAGE IS CLEAR AND UNEQUIVOCAL.— [T]here is no need to subject Article 315 to a liberal interpretation because its language is clear and unequivocal. Courts are not at all times duty-bound to construe and interpret the laws. Elementary is the rule in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. Interpretation is only resorted to when there is ambiguity. But there is no ambiguity in Article 315 of the RPC. Hence, there is no need to interpret

the said provision. The duty of the Court is to apply the law. When the law is clear and unequivocal, the Court has no other recourse but to apply the law and not interpret it (*verba legis*).

13. ID.; PENALTIES; PENALTIES FOR CRIMES SHOULD ALWAYS BE COMMENSURATE WITH THE GRAVITY OR LIGHTNESS OF THE OFFENSE COMMITTED AND PROVED.— In imposing penalty on the accused, a three-fold purpose is hoped to be achieved: (1) the expiation of the crime committed; (2) the correction of the culprit; and (3) the defense of society. In fixing the penalty for the commission of a felony, the RPC takes into account the degree of execution of the crime and the participation of the responsible parties. The goal principally is to establish in the most just manner the proportion of the penalty commensurate with the seriousness of the offense. A lesser punishment than what the law prescribes for an offense is anathema to sound penology. *Penalties for crimes should always be commensurate* with the gravity or lightness of the offense committed and proved.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
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D E C I S I O N

YNARES-SANTIAGO, *J.*:

Before us for review is the February 24, 2006 Decision[1] of the Court of Appeals (CA), affirming with modification the May 14, 2004 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 33, convicting accused-appellant Beth Temporada of the crime of large scale illegal recruitment, or violation of Article 38 of the Labor Code, as amended, and five (5) counts

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[1] CA *rollo*, pp. 121-136. Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Amelita G. Tolentino and Aurora Santiago-Lagman, concurring.

[2] Penned by Hon. Reynaldo G. Ros.

of *estafa* under Article 315, par. (2)(a) of the Revised Penal Code (RPC).

The antecedents, as found by the appellate court, are as follows:

From September 2001 to January 2002, accused Rosemarie "Baby" Robles, Bernadette Miranda, Nenita Catacotan and Jojo Resco and appellant Beth Temporada, all employees of the Alternative Travel and Tours Corporation (ATTC), recruited and promised overseas employment, for a fee, to complainants Rogelio Legaspi, Jr. as technician in Singapore, and Soledad Atle, Luz Minkay, Evelyn Estacio and Dennis Dimaano as factory workers in Hongkong. The accused and appellant were then holding office at Dela Rosa Street, Makati City but eventually transferred business to Discovery Plaza, Ermita, Manila. After complainants had submitted all the requirements consisting of their respective application forms, passports, NBI clearances and medical certificates, the accused and appellant, on different dates, collected and received from them placement fees in various amounts, *viz*: a) from Rogelio Legaspi, Jr. – ₱57,600.00; b) from Dennis Dimaano – ₱66,520.00; c) from Evelyn Estacio – ₱88,520.00; d) from Soledad Atle – ₱69,520.00 and e) from Luz Minkay – ₱69,520.00. As none of them was able to leave nor recover the amounts they had paid, complainant lodged separate criminal complaints against accused and appellant before the City Prosecutor of Manila. On November 29, 2002, Assistant City Prosecutor Restituto Mangalindan, Jr. filed six (6) Informations against the accused and appellant, one for Illegal Recruitment in Large Scale under Article 38 (a) of the Labor Code as amended, and the rest for five (5) counts of *estafa* under Article 315 paragraph 2 (a) of the Revised Penal Code.

The Information for large scale illegal recruitment reads:

Criminal Case No. 02-208371:

> "The undersigned accuses ROSEMARIE "BABY" ROBLES, BERNADETTE M. MIRANDA, BETH TEMPORADA, NENITA CATACOTAN and JOJO RESCO x x x.
>
> That in or about and during the period comprised between the months of September 2001 and January 2002, inclusive, in the City of Manila, Philippines, the said accused, representing themselves to have the power and capacity to contract, enlist and transport Filipino workers for employment abroad, did then

and there willfully, unlawfully for a fee, recruit and promise employment to REGELIO A. LEGASPI, JR., DENNIS T. DIMAANO, EVELEYN V. ESTACIO, SOLEDAD B. ATTE and LUZ MINKAY without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly or indirectly from said complainant[s] the amount of PH57,600.00, PH66,520.00, PH88,520.00, PH69,520.00, PH69,520.00, respectively, as placement fees in consideration for their overseas employment, which amounts are in excess of or greater than that specified in the scheduled of allowable fees prescribed of the POEA and without reasons and without fault of the said complainants, failed to actually deploy them and failed to reimburse them the expenses they incurred in connection with the documentation and processing of their papers for purposes of their deployment.

Contrary to law."

Except for the name of private complainant and the amount involved, the five (5) Informations for *estafa* contain substantially identical averments as follows:

Criminal Case No. 02-208372:

"The undersigned accuses ROSEMARIE "BABY" ROBLES, BERNADETTE M. MIRANDA, BETH TEMPORADA, NENITA CATACOTAN and JOJO RESCO x x x.

That in or about and during the period comprised between November 23, 2001 and January 12, 2002, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud ROGELIO A. LEGASPI, JR., in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said ROGELIO A. LEGASPI, JR., prior to and even simultaneous with the commission of the fraud, to the effect that they have the power and capacity to recruit and employ ROGELIO A. LEGASPI, JR., as technician in Singapore and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said ROGELIO A. LEGASPI, JR., to give and deliver, as in fact he gave and delivered to said accused the amount of ₱57,600.00 on the

strength of said manifestations and representations said accused well knowing that the same were false and fraudulent and were made solely for the purpose of obtaining, as in fact they did obtain the amount of ₱57,600.00, which amount, once in their possession, with intend to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of said ROGELIO A. LEGASPI, JR. in the aforesaid amount of ₱57,000.00 Philippine Currency.

Contrary to law."

The other four (4) Informations for *estafa* involve the following complainants and amounts:

1.	DENNIS T. DIMAANO	₱66,520.00
2.	EVELYN V. ESTACIO	₱88,520.00
3.	SOLEDAD B. ATLE	₱69,520.00
4.	LUZ T. MINKAY	₱69,520.00[3]

Only appellant was apprehended and brought to trial, the other accused remained at large. Upon arraignment, appellant pleaded not guilty and trial on the merits ensued. After joint trial, on May 14, 2004, the RTC rendered judgment convicting appellant of all the charges:

WHEREFORE, the prosecution having established the GUILT of accused Beth Temporada BEYOND REASONABLE DOUBT, judgment is hereby rendered CONVICTING the said accused, as principal of the offenses charged and she is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (₱500,000.00) for illegal recruitment; and the indeterminate penalty of four (4) years and two (2) months of *prision correctional* as minimum, to nine (9) years and one (1) day of *prision mayor*, as maximum for the *estafa* committed against complainant Rogelio A. Legaspi, Jr.; the indeterminate penalty of four (4) years and two (2) months of *prision correctional* as minimum to ten (10) years and one day of *prision mayor* as maximum each for the *estafa*s committed against complainants, Dennis Dimaano, Soledad B. Atte and Luz T. Minkay; and the indeterminate penalty of four (4) years and two (2) months of *prision correctional* as minimum, to eleven (11) years

[3] CA *rollo*, pp. 121-124.

and one (1) day of *prision mayor* as maximum for the *estafa* committed against Evelyn Estacio.

The accused is also ordered to pay jointly and severally the complainants actual damages as follows:

1.	Rogelio A. Legaspi Jr.	₱57,600.00
2.	Dennis T. Dimaano	66,520.00
3.	Evelyn V. Estacio	88,520.00
4.	Soledad B. Atte	66,520.00
5.	Luz T. Minkay	69,520.00

SO ORDERED.[4]

In accordance with the Court's ruling in *People v. Mateo*,[5] this case was referred to the CA for intermediate review. On February 24, 2006, the CA affirmed with modification the Decision of the RTC:

WHEREFORE, with MODIFICATION to the effect that in Criminal Cases Nos. 02-208373, 02-208375, & 02-208376, appellant is sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional maximum*, as minimum, to ten (10) years and one (1) day of *prision mayor maximum*, as maximum; and in Criminal Case No. 02-208374, she is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor medium*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal minimum*, as maximum, the appealed decision is AFFIRMED in all other respects.[6]

Before this Court, appellant ascribes the lone error that the trial court gravely erred in finding her guilty of illegal recruitment and five (5) counts of *estafa* despite the insufficiency of the evidence for the prosecution.

We affirm the Decision of the CA, except as to the indeterminate penalties imposed for the five (5) counts of *estafa*.

Article 13(b) of the Labor Code defines recruitment and placement thusly:

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[4] *Id.* at 125-26.

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

[6] CA *rollo*, p. 135.

ART. 13. *Definitions.*— x x x

(b) "*Recruitment and placement*" refers to 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 shall be deemed engaged in recruitment and placement.

To constitute illegal recruitment in large scale, three (3) elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. No. 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group.[7]

In the case at bar, the foregoing elements are present. Appellant, in conspiracy with her co-accused, misrepresented to have the power, influence, authority and business to obtain overseas employment upon payment of a placement fee which was duly collected from complainants Rogelio Legaspi, Dennis Dimaano, Evelyn Estacio, Soledad Atle and Luz Minkay. Further, the certification[8] issued by the Philippine Overseas Employment Administration (POEA) and the testimony of Ann Abastra Abas, a representative of said government agency, established that appellant and her co-accused did not possess any authority or license to recruit workers for overseas employment. And, since there were five (5) victims, the trial court correctly found appellant liable for illegal recruitment in large scale.

Appellant insists that she was merely an employee of ATTC and was just "echoing the requirement of her employer." She

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[7] *People v. Gamboa*, G.R. No. 135382, September 29, 2000, 341 SCRA 451, 458.

[8] Exhibits "A", "L", and "L-1".

further argues that the prosecution failed to prove that she was aware of the latter's illegal activities and that she actively participated therein. In essence, she controverts the factual findings of the lower courts.

The contention is untenable.

An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.[9] Appellant actively took part in the illegal recruitment of private complainants. Rogelio Legaspi testified that after introducing herself as the General Manager of ATTC, appellant persuaded him to apply as a technician in Singapore and assured him that there was a job market therefor. In addition to the placement fee of ₱35,000.00 which he paid to accused Bernadette Miranda, he also handed the amount of ₱10,000.00 to appellant who, in turn, issued him a receipt for the total amount of ₱45,000.00. Upon the other hand, Soledad Atle and Luz Minkay, who applied as factory workers in Hongkong through co-accused, Emily Salagonos, declared that it was appellant who briefed them on the requirements for the processing of their application, and assured them and Dennis Dimaano of immediate deployment for jobs abroad. For her part, Evelyn Estacio testified that aside from the placement fee of ₱40,000.00 that she paid to co-accused "Baby" Robles in connection with her purported overseas employment, she also gave appellant ₱10,000.00 for which she was issued a receipt for the amount of ₱5,000.00.

The totality of the evidence, thus, established that appellant acted as an indispensable participant and effective collaborator of her co-accused in the illegal recruitment of complainants. As aptly found by the CA:

Without doubt, all the acts of appellant, consisting of introducing herself to complainants as general manager of ATTC, interviewing

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[9] *People v.* Cabais, G.R. No. 129070, March 16, 2001, 354 SCRA 553, 561.

and entertaining them, briefing them on the requirements for deployment and assuring them that they could leave immediately if they paid the required amounts, unerringly show unity of purpose with those of her co-accused in their scheme to defraud private complainants through false promises of jobs abroad. There being conspiracy, appellant shall be equally liable for the acts of her co-accused even if she herself did not personally reap the fruits of their execution. We quote with approval the trial court's findings on the matter:

> "xxx It is clear that said accused conspired with her co-accused Rosemarie "Baby" Robles, Bernadette M. Miranda, Nenita Catacotan, and Jojo Resco in convincing complainants xxx to apply for overseas jobs and giving complainants Soledad Atle, Luz Minkay and Dennis Dimaano guarantee that they would be hired as factory workers in Hongkong, complainant Rogelio Legaspi, as Technician in Singapore and Evelyn Estacio as quality controller in a factory in Hongkong, despite the fact that the accused was not licensed to do so.
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> It should be noted that all the accused were connected with the Alternative Travel and Tours Corporation (ATTC). Accused Beth Temporada introduced herself as ATTC's General Manager. Saod accused was also the one who received the ₱10,000.00 given by complainant Rogelio Legaspi, Jr. and the ₱10,000.00 given by complainant Evelyn Estacio as payment for their visa and plane ticket, respectively."[10]

Consequently, the defense of appellant that she was not aware of the illegal nature of the activities of her co-accused cannot be sustained. Besides, even assuming *arguendo* that appellant was indeed unaware of the illegal nature of said activities, the same is hardly a defense in the prosecution for illegal recruitment. Under *The Migrant Workers and Overseas Filipinos Act of 1995*, a special law, the crime of illegal recruitment in large scale is *malum prohibitum* and not *malum in se*.[11] Thus, the criminal intent of the accused is not necessary and the fact alone that the accused violated the law warrants her conviction.[12]

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[10] CA *rollo*, pp. 9-10.

[11] *Supra* note 7 at 462.

[12] *Id*.

In the instant case, we find no reason to depart from the rule that findings of fact of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by an appellate court. The assessment of credibility of witnesses is a matter best left to the trial court because it is in the position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts.[13] Further, there is no showing of any ill-motive on the part of the prosecution witnesses in testifying against appellant. Absent such improper motive, the presumption is that they were not so actuated and their testimony is entitled to full weight and credit.

Section 7(b) of R.A. No. 8042 prescribes the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 for the crime of illegal recruitment in large scale or by a syndicate. The trial court, therefore, properly meted the penalty of life imprisonment and a fine of ₱500,000.00 on the appellant.

Anent the conviction of appellant for five (5) counts of *estafa*, we, likewise, affirm the same. Well-settled is the rule that a person convicted for illegal recruitment under the Labor Code may, for the same acts, be separately convicted for *estafa* under Article 315, par. 2(a) of the RPC.[14] The elements of *estafa* are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation.[15] The same evidence proving appellant's criminal liability for illegal recruitment also established her liability for *estafa*. As previously discussed, appellant together with her co-accused defrauded complainants into believing that they had the authority and capability to send complainants for overseas employment. Because

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[13] *People v. Guambor*, G.R. No. 152183, January 22, 2004, 420 SCRA 677, 683.

[14] *People v. Ballesteros*, G.R. Nos. 116905-908, August 6, 2002, 386 SCRA 193, 212.

[15] *Id.* at 213.

of these assurances, complainants parted with their hard-earned money in exchange for the promise of future work abroad. However, the promised overseas employment never materialized and neither were the complainants able to recover their money.

While we affirm the conviction for the five (5) counts of *estafa*, we find, however, that the CA erroneously computed the indeterminate penalties therefor. The CA deviated from the doctrine laid down in *People v. Gabres*;[16] hence its decision should be reversed with respect to the indeterminate penalties it imposed. The reversal of the appellate court's Decision on this point does not, however, wholly reinstate the indeterminate penalties imposed by the trial court because the maximum terms, as determined by the latter, were erroneously computed and must necessarily be rectified.

The prescribed penalty for *estafa* under Article 315, par. 2(d) of the RPC, when the amount defrauded exceeds ₱22,000.00, is *prisión correccional* maximum to *prisión mayor* minimum. The minimum term is taken from the penalty next lower or anywhere within *prisión correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five *estafa* cases at 4 years and 2 months of *prisión correccional* since this is within the range of *prisión correccional* minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum is not *prisión mayor* minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, *prisión correccional* maximum to *prisión mayor* minimum should be divided into three equal portions of time each of which portion

[16] 335 Phil. 242 (1997).

shall be deemed to form one period in accordance with Article 65[17] of the RPC. Following this procedure, the maximum period of *prisión correccional* maximum to *prisión mayor* minimum is from 6 years, 8 months and 21 days to 8 years.[18] The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.[19]

In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan*[20] in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. The doctrine enunciated in *People v. Benemerito*[21] insofar as the fraction of a year was utilized in computing the total incremental penalty should, thus, be modified. In accordance with the above procedure, the maximum term of the indeterminate sentences imposed by the RTC should be as follows:

In Criminal Case No. 02-208372, where the amount defrauded was ₱57,600.00, the RTC sentenced the accused to an indeterminate penalty of 4 years and 2 months of *prisión correccional* as minimum, to 9 years and 1 day of *prisión mayor* as maximum. Since the amount defrauded exceeds ₱22,000.00 by ₱35,600.00, 3 years shall be added to the maximum period of the prescribed penalty (or added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion

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[17] ARTICLE 65. *Rule in Cases in Which the Penalty is Not Composed of Three Periods*. — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

[18] *People v. Saley*, G.R. No. 121179, July 2, 1998, 291 SCRA 715, 753-754.

[19] *Id.* at 755.

[20] 331 Phil. 64 (1996).

[21] 332 Phil. 710, 730-731 (1996).

of the court). The lowest maximum term, therefore, that can be validly imposed is 9 years, 8 months and 21 days of *prisión mayor*, and not 9 years and 1 day of *prisión mayor*.

In Criminal Case Nos. 02-208373, 02-208375, and 02-208376, where the amounts defrauded were ₱66,520.00, ₱69,520.00, and ₱69,520.00, respectively, the accused was sentenced to an indeterminate penalty of 4 years and 2 months of *prisión correccional* as minimum, to 10 years and 1 day of *prisión mayor* as maximum for each of the aforesaid three *estafa* cases. Since the amounts defrauded exceed ₱22,000.00 by ₱44,520.00, ₱47,520.00, and ₱47,520.00, respectively, 4 years shall be added to the maximum period of the prescribed penalty (or added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court). The lowest maximum term, therefore, that can be validly imposed is 10 years, 8 months and 21 days of *prisión mayor*, and not 10 years and 1 day of *prisión mayor*.

Finally, in Criminal Case No. 02-208374, where the amount defrauded was ₱88,520.00, the accused was sentenced to an indeterminate penalty of 4 years and 2 months of *prisión correccional* as minimum, to 11 years and 1 day of *prisión mayor* as maximum. Since the amount defrauded exceeds ₱22,000.00 by ₱66,520.00, 6 years shall be added to the maximum period of the prescribed penalty (or added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court). The lowest maximum term, therefore, that can be validly imposed is 12 years, 8 months and 21 days of *reclusión temporal*, and not 11 years and 1 day of *prisión mayor*.

Response to the dissent.

In the computation of the indeterminate sentence for *estafa* under Article 315, par. 2(a) of the Revised Penal Code (RPC), the Court has **consistently** followed the doctrine espoused in *Pabalan* and more fully explained in *Gabres.* The dissent argues that *Gabres* should be reexamined and abandoned.

We sustain *Gabres.*

I.

The formula proposed in the Dissenting Opinion of Mr. Justice Ruben T. Reyes, *i.e.*, the maximum term shall first be computed by applying the incremental penalty rule, and thereafter the minimum term shall be determined by descending one degree down the scale of penalties from the maximum term, is a novel but erroneous interpretation of the ISL in relation to Article 315, par. 2(a) of the RPC. Under this interpretation, it is not clear how the maximum and minimum terms shall be computed. Moreover, the legal justification therefor is not clear because the meaning of the terms "penalty," "prescribed penalty," "penalty actually imposed," "minimum term," "maximum term," "penalty next lower in degree," and "one degree down the scale of penalties" are not properly set out and are, at times, used interchangeably, loosely and erroneously.

For purposes of this discussion, it is necessary to first clarify the meaning of certain terms in the sense that they will be used from here on. Later, these terms shall be aligned to what the dissent appears to be proposing in order to clearly address the points raised by the dissent.

The RPC provides for an initial penalty as a general prescription for the felonies defined therein which consists of a range of period of time. This is what is referred to as the "**prescribed penalty**." For instance, under Article 249[22] of the RPC, the prescribed penalty for homicide is *reclusión temporal* which ranges from 12 years and 1 day to 20 years of imprisonment. Further, the Code provides for attending or modifying circumstances which when present in the commission of a felony affects the computation of the penalty to be imposed on a convict. This penalty, as thus modified, is referred to as the "**imposable penalty**." In the case of homicide which is committed with one ordinary aggravating circumstance and no mitigating circumstances, the imposable penalty under the RPC shall be

[22] ARTICLE 249. *Homicide*. — Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusión temporal*.

the prescribed penalty in its maximum period. From this imposable penalty, the court chooses a single fixed penalty (also called a straight penalty) which is the "**penalty actually imposed**" on a convict, *i.e.*, the prison term he has to serve.

Concretely, in *U.S. v. Saadlucap*,[23] a **pre-ISL case**, the accused was found guilty of homicide with a prescribed penalty of *reclusión temporal*. Since there was one ordinary aggravating circumstance and no mitigating circumstances in this case, the imposable penalty is *reclusión temporal* in its maximum period, *i.e.*, from 17 years, 4 months and 1 day to 20 years. The court then had the discretion to impose any prison term provided it is within said period, so that the penalty actually imposed on the accused was set at 17 years, 4 months and 1 day of *reclusión temporal*,[24] which is a single fixed penalty, with no minimum or maximum term.

With the **passage of the ISL**, the law created a prison term which consists of a minimum and maximum term called the indeterminate sentence.[25] Section 1 of the ISL provides —

> SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x.

Thus, the maximum term is that which, in view of the attending circumstances, could be properly imposed under the RPC. **In other words, the penalty actually imposed under the pre-**

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[23] 3 Phil. 437 (1904).

[24] *Id.* at 440.

[25] The penalty is considered "indeterminate" because after the convict serves the minimum term, he or she may become eligible for parole under the provisions of Act No. 4103, which leaves the period between the minimum and maximum term indeterminate in the sense that he or she may, under the conditions set out in said Act, be released from serving said period in whole or in part. (*People v. Ducosin*, 59 Phil. 109, 114 [1933])

ISL regime became the maximum term under the ISL regime. Upon the other hand, the minimum term shall be within the range of the penalty next lower to the prescribed penalty. To illustrate, if the case of *Saadlucap* was decided under the ISL regime, then the maximum term would be 17 years, 4 months and 1 day of *reclusión temporal* and the minimum term could be anywhere within the range of *prisión mayor* (6 years and 1 day to 12 years) which is the penalty next lower to *reclusión temporal*. Consequently, an indeterminate sentence of 10 years of *prisión mayor* as minimum to 17 years, 4 months and 1 day of *reclusión temporal* as maximum could have possibly been imposed.

If we use the formula as proposed by the dissent, *i.e.*, to compute the minimum term based on the maximum term *after the attending or modifying circumstances are considered*, the basis for computing the minimum term, under this interpretation, is the imposable penalty[26] as hereinabove defined. This interpretation is at odds with Section 1 of the ISL which clearly states that the minimum of the indeterminate sentence shall be "within the range of the penalty next lower to that prescribed by the Code for the offense." Consequently, the basis for fixing the minimum term is the **prescribed penalty**,[27] and **not** the imposable penalty.

In *People v. Gonzales*,[28] the Court held that the minimum term must be based on the penalty prescribed by the Code for the offense "without regard to circumstances modifying criminal liability."[29] The *Gonzales'* ruling that the minimum term must

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[26] In the other portions of the dissent though, there is also the impression that the basis is the penalty actually imposed as hereinabove defined. Whether it is the imposable penalty or penalty actually imposed, the dissent's interpretation contravenes the ISL because the minimum term should be fixed based on the prescribed penalty.

[27] *See* Aquino and Griño-Aquino, *The Revised Penal Code*, Vol. 1, 1997 ed., pp. 772-773; Padilla, *Criminal Law: Revised Penal Code Annotated*, 1988 ed., pp. 211-214.

[28] 73 Phil. 549 (1941).

[29] *Id.* at 552.

be based on the prescribed penalty "without regard to circumstances modifying criminal liability" is only a **restatement** of Section 1 of the ISL that the minimum term shall be taken from within the range of the penalty next lower to the prescribed penalty (and from nowhere else).[30]

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[30] The dissent cites several cases to establish that *Gonzales* has not been followed in cases outside of *estafa*. An examination of these cases reveals that this assertion is inaccurate.

1. *Sabang v. People*, G.R. No. 168818, March 9, 2007, 518 SCRA 35; *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280; *People v. Concepcion*, G.R. No. 169060, February 6, 2007, 514 SCRA 660; *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296; *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675.

Gonzales was applied in these cases.

2. *People v. Miranda*, G.R. No. 169078, March 10, 2006, 484 SCRA 555; *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827—belongs to the class of cases involving accessories and accomplices as well as the frustrated and attempted stages of a felony.

Strictly speaking, these cases do not deviate from *Gonzales*. Here, the prescribed penalty for the principal and consummated stage, respectively, should be merely viewed as being lowered by the proper number of degrees in order to arrive at the prescribed penalties for accomplices and accessories as well as the frustrated and attempted stages of a felony. In turn, from these prescribed penalties, the minimum term is determined without considering in the meantime the modifying circumstances, as in *Gonzales*.

3. *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827—belongs to the class of cases involving privileged mitigating circumstances.

These cases are, to a certain extent, an exception to the rule enunciated in *Gonzales*. Here, the prescribed penalty is first reduced by the proper number of degrees due to the existence of a privileged mitigating circumstance. As thus reduced, the penalty next lower in degree is determined from which the minimum term is taken. To the extent that the privileged mitigating circumstance, as a modifying circumstance, is first applied to the prescribed penalty before the penalty next lower in degree is determined, these cases deviate from *Gonzales*. However, this interpretation is based on the special nature of a privileged mitigating circumstance as well as the liberal construction of penal laws in favor of the accused. If the privileged mitigating circumstance is not first applied to the prescribed penalty before determining the penalty next lower in degree from which the minimum term is taken, it may happen that the maximum term of the indeterminate sentence would be lower than the minimum term, or that the minimum and maximum term would both be taken

Further, the dissent proceeds from the erroneous premise that its so-called "regular formula" has generally been followed in applying the ISL. To reiterate, according to the dissent, the "regular formula" is accomplished by first determining the maximum term after considering all the attending circumstances; thereafter, the minimum term is arrived at by going one degree down the scale from the maximum term. As previously discussed, this essentially means, using the terms as earlier defined, that the minimum term shall be taken from the penalty next lower to the imposable penalty (and not the prescribed penalty.) In more concrete terms and using the previous example of homicide with one ordinary aggravating circumstance, this would mean that the minimum term for homicide will no longer be based on *reclusión temporal* (*i.e.*, the prescribed penalty for homicide) but *reclusión temporal* in its maximum period (*i.e.*, the imposable penalty for homicide with one ordinary aggravating circumstance) so much so that the minimum term shall be taken from *reclusión temporal* in its medium period (and no longer from *prisión mayor)* because this is the penalty next lower to *reclusión temporal* in its maximum period. The penalty from which the minimum term is taken is, thus, significantly increased. **From this example, it is not difficult to discern why this interpretation radically departs from how the ISL has generally been applied by this Court.** The dissent's "regular formula" is, therefore, anything but regular.

In fine, the "regular formula" espoused by the dissent deviates from the ISL and established jurisprudence and is, thus, tantamount to judicial legislation.

II.

There is no absurdity or injustice in fixing or "stagnating" the minimum term within the range of *prisión correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4

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from the same range of penalty—absurdities that the law could not have intended. These special considerations which justified a deviation from *Gonzales* are not present in the instant case. As will be shown later, *Gabres* is a reasonable interpretation of the ISL in relation to Article 315, par. 2(a) of the RPC, and any contrary interpretation would be unfavorable to the accused.

years and 2 months). Preliminarily, it must be emphasized that the minimum term taken from the aforementioned range of penalty need not be the same for every case of *estafa* when the amount defrauded exceeds ₱12,000.00. In *People v. Ducosin*,[31] the Court provided some guidelines in imposing the minimum term from the range of the penalty next lower to the prescribed penalty:

> We come now to determine the "minimum imprisonment period" referred to in Act No. 4103. Section 1 of said Act provides that this "minimum which shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense."[32] We are here upon new ground. It is in determining the "minimum" penalty that Act No. 4103 confers upon the courts in the fixing of penalties the widest discretion that the courts have ever had. The determination of the "minimum" penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits.
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> We come now to the second aspect of the determination of the minimum penalty, namely, the considerations which should guide the court in fixing the term or duration of the minimum period of imprisonment. Keeping in mind the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness" (Message of the Governor-General, Official Gazette No. 92, vol. XXXI, August 3, 1933), it is necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order.

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[31] 59 Phil. 109 (1933).

[32] This wording of Act No. 4103 was later amended to the current wording "minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense" by Act No. 4225.

Considering the criminal as an individual, some of the factors that should be considered are: (1) His age, especially with reference to extreme youth or old age; (2) his general health and physical condition; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime was committed; (9) the gravity of the offense (note that Section 2 of Act No. 4103 excepts certain grave crimes — this should be kept in mind in assessing the minimum penalties for analogous crimes).

In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, his relationship towards society at large and the State are important factors. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in these Islands. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.[33]

Admittedly, it is possible that the court, upon application of the guidelines in *Ducosin*, will impose the same minimum term to one who commits an *estafa* involving ₱13,000.00 and another involving ₱130 million. In fact, to a lesser degree, this is what happened in the instant case where the trial court sentenced the accused to the same minimum term of 4 years and 2 months of *prisión correccional* in Criminal Case Nos. 02-208372, 02-208373, 02-208375, 02-208376, and 02-208374 where the amounts defrauded were ₱57,600.00, P66,520.00, ₱69,520.00, ₱69,520.00 and ₱88,520.00, respectively. However, there is no absurdity and injustice for two reasons.

One, while it is possible that the minimum term imposed by a court would be the same, the maximum term would be greater

[33] *Supra* note 31 at 116-118.

for the convict who committed *estafa* involving ₱130 million (which would be 20 years of *reclusion temporal*) than the convict who swindled ₱13,000.00 (which could be anywhere from *prisión correccional* maximum to *prisión mayor* minimum or from 4 years, 2 months and 1 day to 8 years).[34] Assuming that both convicts qualify for parole after serving the same minimum term, the convict sentenced to a higher maximum term would carry a greater "burden" with respect to the length of parole surveillance which he *may* be placed under, and the prison term to be served in case he violates his parole as provided for in Sections 6[35] and 8[36] of the ISL. Under Section 6, the convict shall be placed under a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Pardon and

[34] Similarly, in the instant case, the maximum term imposed on the accused increased as the amount defrauded increased in the various criminal cases filed against her as a consequence of the incremental penalty rule.

[35] Sec. 6. Every prisoner released from confinement on parole by virtue of this Act shall, at such times and in such manner as may be required by the conditions of his parole, as may be designated by the said Board for such purpose, report personally to such government officials or other parole officers hereafter appointed by the Board of Indeterminate Sentence for a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Indeterminate Sentence as herein provided. The officials so designated shall keep such records and make such reports and perform such other duties hereunder as may be required by said Board. The limits of residence of such paroled prisoner during his parole may be fixed and from time to time changed by the said Board in its discretion. If during the period of surveillance such paroled prisoner shall show himself to be a law-abiding citizen and shall not violate any of the laws of the Philippine Islands, the Board of Indeterminate Sentence may issue a final certificate of release in his favor, which shall entitle him to final release and discharge.

[36] Sec. 8. Whenever any prisoner released on parole by virtue of this Act shall, during the period of surveillance, violate any of the conditions of his parole, the Board of Indeterminate Sentence may issue an order for his re-arrest which may be served in any part of the Philippine Islands by any police officer. In such case the prisoner so re-arrested shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison, unless the Board of Indeterminate Sentence shall, in its discretion, grant a new parole to the said prisoner.

Paroles. Further, the convict with the higher maximum term would have to serve a longer period upon his re-commitment in prison in case he violates his parole because he would have to serve the remaining portion of the maximum term, unless the Board of Pardon and Paroles shall, in its discretion, grant a new parole to the said convict as provided for in Section 8.

Although the differences in treatment are in the nature of potential liabilities, to this limited extent, the ISL still preserves the greater degree of punishment in the RPC for a convict who commits *estafa* involving a greater amount as compared to one who commits *estafa* involving a lesser amount. **Whether these differences in treatment are sufficient in substance and gravity involves a question of wisdom and expediency of the ISL that this Court cannot delve into.**

Two, the rule which provides that the minimum term is taken from the range of the penalty next lower to the prescribed penalty is, likewise, applicable to other offenses punishable under the RPC. For instance, the minimum term for an accused guilty of homicide with one generic mitigating circumstance vis-à-vis an accused guilty of homicide with three ordinary aggravating circumstances would both be taken from *prisión mayor* — the penalty next lower to *eclusion temporal*. Evidently, the convict guilty of homicide with three ordinary aggravating circumstances committed a more perverse form of the felony. Yet it is possible that the court, after applying the guidelines in *Ducosin*, will impose upon the latter the same minimum term as the accused guilty of homicide with one generic mitigating circumstance. This reasoning can be applied *mutatis mutandis* to most of the other offenses punishable under the RPC. Should we then conclude that the ISL creates absurd results for these offenses as well?

In fine, what is perceived as absurd and unjust is actually the **intent of the legislature** to be beneficial to the convict in order to "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness."[37] By the legislature's deliberate design,

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[37] *Supra* note 31 at 117.

the range of penalty from which the minimum term is taken remains fixed and only the range of penalty from which the maximum term is taken changes depending on the number and nature of the attending circumstances. Again, the reason why the legislature elected this mode of beneficence to a convict revolves on questions of wisdom and expediency which this Court has no power to review. The balancing of the State's interests in deterrence and retributive justice vis-à-vis reformation and reintegration of convicts to society through penal laws belongs to the exclusive domain of the legislature.

III.

People v. Romero,[38] *De Carlos v. Court of Appeals*,[39] *Salazar v. People*,[40] *People v. Dinglasan*[41] and, by analogy, *People v. Dela Cruz*[42] do not support the formula being proposed by the dissent.

The instant case involves a violation of Article 315, par. 2(a) of the RPC.[43] The penalty for said violation is —

> ARTICLE 315. Swindling (*Estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> 1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such

[38] G.R. No. 112985, April 21, 1999, 306 SCRA 90.

[39] G.R. No. 103065, August 16, 1999, 312 SCRA 397.

[40] G.R. No. 149472, October 15, 2002, 391 SCRA 162.

[41] G.R. No. 133645, September 17, 2002, 389 SCRA 71.

[42] 383 Phil. 213 (2000).

[43] *Estafa* committed by using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

> cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be. x x x

In contrast, *Romero, De Carlos,* and *Salazar* involved violations of Article 315 of the RPC **as amended by Presidential Decree (P.D.) No. 1689**[44] because: (1) the funds defrauded were contributed by stockholders or solicited by corporations/associations from the general public, (2) the amount defrauded was greater than ₱100,000.00, and (3) the *estafa* was not committed by a syndicate. Section 1 of P.D. No. 1689 provides—

> Sec. 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)," or farmers association, or of funds solicited by corporations/associations from the general public.
>
> **When not committed by a syndicate as above defined, the penalty imposable shall be *reclusión temporal* to *reclusión perpetua* if the amount of the fraud exceeds 100,000 pesos.** (Emphasis supplied)

Since the prescribed penalty is *reclusión temporal* to *reclusión perpetua*, the minimum terms were taken from *prisión mayor*, which is the penalty next lower to the prescribed penalty.[45] As can be seen, these cases involved a different penalty structure **that does not make use of the incremental penalty rule** due to the amendatory law. Thus, the comparison of these cases with *Gabres* is improper.

Meanwhile, in *Dinglasan*, the felony committed was *estafa* through bouncing checks which is punishable under Article 315

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[44] Effective April 6, 1980.

[45] *See* Article 61 of the RPC.

par. 2(d) of the RPC **as amended by Republic Act (RA) No. 4885**[46]**—**

Sec. 1. Section Two, Paragraph (d), Article Three hundred fifteen of Act Numbered Thirty-eight hundred and fifteen is hereby amended to read as follows:

"Sec. 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

"(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."

and P.D. No. 818[47]**—**

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

1st. The penalty of ***reclusión temporal*** if the amount of the fraud is over 12,000 pesos but 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 *reclusión perpetua*; x x x (Emphasis supplied)

Here, the prescribed penalty of *prisión correccional* maximum to *prisión mayor* minimum was increased to *reclusión temporal* by the amendatory law. Consequently, the penalty next lower

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[46] Effective June 17, 1967.

[47] Effective October 22, 1975.

to *reclusión temporal* is *prisión mayor* from which the minimum term was taken. This is the reason for the higher minimum term in this case as compared to *Gabres*. In fact, *Dinglasan* is consistent with *Gabres*—

> Since the face value of Check No. 029021, for which appellant is criminally liable for *estafa*, exceeds ₱22,000, the penalty abovecited must be "imposed in its maximum period, adding 1 year for each additional ₱10,000." Pursuant to *People vs. Hernando*, G.R. No. 125214, Oct. 28, 1999, an indeterminate sentence shall be imposed on the accused, computed favorably to him. In this case, the indeterminate sentence should be computed based on the maximum period of *reclusión temporal* as maximum, which is from 17 years, 4 months, and 1 day to 20 years. **The minimum period of the sentence should be within the penalty next lower in degree as provided in the Revised Penal Code, *i.e., prisión mayor,* which is from 6 years and 1 day to 12 years imprisonment.** Considering that the excess of the fraud committed, counting from the base of ₱22,000, is only ₱4,400, which is less than the ₱10,000 stated in P.D. 818, there is no need to add one year to the maximum penalty abovecited.[48] (Emphasis supplied)

As in *Gabres*, the penalty next lower (*i.e., prisión mayor*) was determined without considering in the meantime the effect of the amount defrauded in excess of ₱22,000.00 on the prescribed penalty (*i.e., reclusión temporal*).

Finally, *Dela Cruz* involved a case for qualified theft. The prescribed penalty for qualified theft is two degrees higher than simple theft. Incidentally, the penalty structure for simple theft[49]

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[48] *Supra* note 41 at 80.

[49] ARTICLE 309. *Penalties*. — Any person guilty of theft shall be punished by:

> 1. The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory

and *estafa* is similar in that both felonies (1) requires that the prescribed penalty be imposed in its maximum period when the value of the thing stolen or the amount defrauded, as the case may be, exceeds ₱22,000.00, and (2) provides for an incremental penalty of 1 year imprisonment for every ₱10,000.00 in excess of ₱22,000.00. It should be pointed out, however, that the prescribed penalty for simple theft is *prisión mayor* minimum and medium while in *estafa* it is lower at *prisión correccional* maximum to *prisión mayor* minimum.

Being two degrees higher, the prescribed penalty for qualified theft is, thus, *reclusión temporal* medium and maximum, while the minimum term is taken from the range of *prisión mayor* maximum to *reclusión temporal* minimum, which is the penalty next lower to *reclusión temporal* medium and maximum. The penalty next lower to the prescribed penalty is determined without first considering the amount stolen in excess of ₱22,000.00 consistent with *Gabres*. In fact, *Dela Cruz* **expressly cites** *Gabres*—

> Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense, **without first considering any modifying circumstance attendant to the commission of the crime**. Since the penalty prescribed by law is *reclusión temporal* medium and maximum, the penalty next lower would be *prisión mayor* in its maximum period to *reclusión temporal* in its minimum period. Thus, the minimum of the indeterminate sentence shall be anywhere within ten (10) years and one (1) day to fourteen (14) years and eight (8) months.
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> The maximum of the indeterminate penalty is that which, taking into consideration the attending circumstances, could be properly imposed under the Revised Penal Code. **Since the amount involved in the present case exceeds ₱22,000.00, this should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence, not in the initial determination of the indeterminate penalty.** (citing

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penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be. x x x

Gabres) Thus, the maximum term of the indeterminate penalty in this case is the maximum period of *reclusión temporal* medium and maximum, which ranges from eighteen (18) years, two (2) months, and twenty one (21) days to twenty (20) years, as computed pursuant to Article 65, in relation to Article 64 of the Revised Penal Code.[50] (Emphasis supplied)

Clearly, none of these cases supports the Dissenting Opinion's thesis that the minimum term should be computed based on the maximum term. Quite the contrary, *Dinglasan* and *Dela Cruz* are consistent with *Gabres*.

IV.

The argument that the incremental penalty rule should not be considered as analogous to a modifying circumstance stems from the erroneous interpretation that the "attending circumstances" mentioned in Section 1 of the ISL are limited to those modifying circumstances falling within the scope of Articles 13 and 14 of the RPC. Section 1 of the ISL is again quoted below —

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, **in view of the attending circumstances, could be properly imposed under the rules of said Code**, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x (Emphasis supplied)

The plain terms of the ISL show that the legislature did not intend to limit "attending circumstances" as referring to Articles 13 and 14 of the RPC. If the legislature intended that the "attending circumstances" under the ISL be limited to Articles 13 and 14, then it could have simply so stated. The wording of the law clearly permits other modifying circumstances outside of Articles 13 and 14 of the RPC to be treated as "attending circumstances" for purposes of the application of the ISL, such

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[50] *Supra* note 42 at 227-228.

as quasi-recidivism under Article 160[51] of the RPC. Under this provision, "any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony." This circumstance has been interpreted by the Court as a special aggravating circumstance where the penalty actually imposed is taken from the prescribed penalty in its maximum period without regard to any generic mitigating circumstances.[52] Since quasi-recidivism is considered as merely a special aggravating circumstance, the penalty next lower in degree is computed based on the prescribed penalty without first considering said special aggravating circumstance as exemplified in *People v. Manalo*[53] and *People v. Balictar*.[54]

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[51] ARTICLE 160. *Commission of Another Crime During Service of Penalty Imposed for Another Previous Offense — Penalty*. — Besides the provisions of rule 5 of Article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency.

[52] *See People v. Perete*, 111 Phil. 943, 947 (1961).

[53] G.R. No. L-55177, February 27, 1987, 148 SCRA 98, 110.

[54] G.R. No. L-29994, July 20, 1979, 91 SCRA 500, 511.

The dissent argues that the use of quasi-recidivism as an example of an "attending circumstance" which is outside the scope of Article 14 of the RPC is inappropriate because quasi-recidivism is *sui generis*. The argument is off-tangent. The point is simply that quasi-recidivism is not found under Article 14 of the RPC yet it is treated as an "attending circumstance" for purposes of the application of the ISL in relation to the RPC. Hence, there **are "**attending circumstances" outside the scope of Articles 13 and 14 of the RPC. For the same reason, the incremental penalty rule is a special rule outside of Article 14 which, as will be discussed later on, serves the same function as modifying circumstances under Articles 13 and 14 of the RPC. *See also* Reyes, L.B., *The Revised Penal Code*, 14th ed., 1998, p. 766.

The question whether the incremental penalty rule is covered within the letter and spirit of "attending circumstances" under the ISL was answered in the affirmative by the Court in *Gabres* when it ruled therein that the incremental penalty rule is analogous to a modifying circumstance.

Article 315 of the RPC pertinently provides —

ARTICLE 315. Swindling (*Estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

> 1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be. x x x

Under *Gabres*, *prisión correccional* maximum to *prisión mayor* minimum is the prescribed penalty[55] for *estafa* when the amount

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[55] The common thread in the RPC is to fix the prescribed penalty as the starting point for determining the prison sentence to be finally imposed. From the prescribed penalty, the attending circumstances are then considered in order to finally fix the penalty actually imposed. Further, the designation of a prescribed penalty is made in individual articles, or prescribed penalties are individually designated in separate paragraphs within a single article. Under Article 315, the penalty for *estafa* when the amount defrauded is over ₱12,000.00 but does not exceed ₱22,000.00 and when such amount exceeds ₱22,000.00 is lumped within the same paragraph. Thus, the penalty of *prisión correccional* maximum to *prisión mayor* minimum may be reasonably considered as the starting point for the computation of the penalty actually imposed, and hence, the prescribed penalty when the amount defrauded exceeds ₱22,000.00. As will be discussed shortly, the amount defrauded in excess of ₱22,000.00 may then be treated as a special aggravating circumstance and the incremental penalty as analogous to a modifying circumstance in order to arrive at the penalty actually imposed consistent with the letter and spirit of the ISL in relation to the RPC.

defrauded exceeds ₱22,000.00. An amount defrauded in excess of ₱22,000.00 is effectively considered as a special aggravating circumstance in the sense that the penalty actually imposed shall be taken from the prescribed penalty in its maximum period without regard to any generic mitigating circumstances. Consequently, the penalty next lower in degree is still based on the prescribed penalty without in the meantime considering the effect of the amount defrauded in excess of ₱22,000.00.

What is unique, however, with the afore-quoted provision is that when the amount defrauded is ₱32,000.00 or more, the prescribed penalty is not only imposed in its maximum period but there is imposed an incremental penalty of 1 year imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty which may be imposed shall not exceed 20 years. This incremental penalty rule is a special rule applicable to *estafa* and theft. In the case of *estafa*, the incremental penalty is added to the maximum period of the prescribed penalty (or to anywhere from 6 years, 8 months and 21 days to 8 years) at the discretion of the court, in order to arrive at the penalty actually imposed (*i.e.*, the maximum term, within the context of the ISL).

This unique characteristic of the incremental penalty rule does not pose any obstacle to interpreting it as analogous to a modifying circumstance, and, hence, falling within the letter and spirit of "attending circumstances" for purposes of the application of the ISL. Under the wording of the ISL, "attending circumstances" may be reasonably interpreted as referring to such circumstances that are applied in conjunction with certain rules in the Code in order to determine the penalty to be actually imposed based on the prescribed penalty of the Code for the offense. The incremental penalty rule substantially meets this standard. The circumstance is the amount defrauded in excess of ₱22,0000.00 and the incremental penalty rule is utilized to fix the penalty actually imposed. At its core, the incremental penalty rule is merely a mathematical formula for computing the penalty to be actually imposed using the prescribed penalty as starting point. Thus, it serves the same function of determining the penalty actually imposed as the modifying circumstances

under Articles 13, 14, and 160 of the RPC, although the manner by which the former accomplishes this function differs with the latter. For this reason, the incremental penalty rule may be considered as merely analogous to modifying circumstances. Besides, in case of doubt as to whether the incremental penalty rule falls within the scope of "attending circumstances" under the ISL, **the doubt should be resolved in favor of inclusion** because this interpretation is more favorable to the accused following the time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused.[56] Thus, even if the Dissenting Opinion's interpretation is gratuitously conceded as plausible, as between *Gabres* and the dissent's interpretation, *Gabres* should be sustained since it is the interpretation more favorable to the accused.

V.

The claim that the maximum term should only be one degree away from the minimum term **does not make sense within the meaning of "degrees" under the RPC because the minimum and maximum terms consist of single fixed penalties.** At any rate, the point seems to be that the penalty from which the minimum term is taken should only be one degree away from the penalty from which the maximum term is taken.

As a general rule, the application of modifying circumstances, the majority being generic mitigating and ordinary aggravating circumstances, does not result to a maximum term fixed beyond the prescribed penalty. At most, the maximum term is taken from the prescribed penalty in its maximum period. Since the maximum term is taken from the prescribed penalty and the minimum term is taken from the next lower penalty, then, in this limited sense, the difference would naturally be only one degree. Concretely, in the case of homicide with one ordinary aggravating circumstance, the maximum term is taken from *reclusión temporal* in its maximum period which is within the prescribed penalty of *reclusión temporal*, while the minimum term is taken from *prisión mayor* which is the penalty next

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[56] *People v. Ladjaalam*, 395 Phil. 1, 35 (2000).

lower to *reclusión temporal*; hence, the one-degree difference observed by the dissent.

In comparison, under the incremental penalty rule, the maximum term can exceed the prescribed penalty. Indeed, at its extreme, the maximum term can be as high as 20 years of *reclusión temporal* while the prescribed penalty remains at *prisión correccional* maximum to *prisión mayor* minimum, hence, the penalty next lower to the prescribed penalty from which the minimum term is taken remains at anywhere within *prisión correccional* minimum and medium, or from 6 months and 1 day to 4 years and 2 months. In this sense, the incremental penalty rule deviates from the afore-stated general rule.[57]

However, it is one thing to say that, *generally*, the penalty from which the minimum term is taken is only one degree away from the penalty from which the maximum term is taken, and completely another thing to claim that the penalty from which the minimum term is taken **should** only be one degree away from the penalty from which the maximum term is taken.

The one-degree difference is merely the result of a *general observation* from the application of generic mitigating and ordinary aggravating circumstances in the RPC in relation to the ISL. **Nowhere** does the ISL refer to the one-degree difference as an essential requisite of an "attending circumstance." If the application of the incremental penalty rule deviates from the one-degree difference, this only means that the law itself has provided for an exception thereto. Verily, the one-degree difference is a *mere consequence* of the generic mitigating and ordinary aggravating circumstances created by the legislature. The difficulty of the dissent with the deviation from its so-called one-degree difference rule seems to lie with the inability to view these "attending circumstances" as mere artifacts or creations of the legislature. It does not make sense to argue that the legislature cannot formulate "attending circumstances" that operate differently than

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[57] Cases involving privileged mitigating circumstances would, likewise, deviate from this general rule since the maximum term would be taken from a penalty *lower* than the prescribed penalty. *See* note 13.

these generic mitigating and ordinary aggravating circumstances, and that, *expectedly*, leads to a different result from the one-degree difference—for it would be to say that the creator can only create one specie of creatures. Further, it should be reasonably assumed that the legislature was aware of these special circumstances, like the incremental penalty rule or privileged mitigating circumstances, at the time it enacted the ISL as well as the consequent effects of such special circumstances on the application of said law. Thus, for as long as the incremental penalty rule is consistent with the letter and spirit of "attending circumstances" under the ISL, there is no obstacle to its treatment as such.

VI.

Much has been said about the leniency, absurdity and unjustness of the result under *Gabres*; the need to adjust the minimum term of the indeterminate penalty to make it commensurate to the gravity of the *estafa* committed; the deterrence effect of a stiffer imposition of penalties; and a host of other similar reasons to justify the reversal of *Gabres*. However, all these relate to policy considerations beyond the wording of the ISL in relation to the RPC; considerations that if given effect essentially seek to rewrite the law in order to conform to one notion (out of an infinite number of such notions) of wisdom and efficacy, and, ultimately, of justice and mercy.

This Court is not the proper forum for this sort of debate. The Constitution forbids it, and the principle of separation of powers abhors it. The Court applies the law as it finds it and not as how it thinks the law should be. Not too long ago in the case of *People v. Veneracion*,[58] this Court spoke about the dangers of allowing one's personal beliefs to interfere with the duty to uphold the Rule of Law which, over a decade later, once again assumes much relevance in this case:

Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs

[58] G.R. Nos. 119987-88, October 12, 1995, 249 SCRA 244.

were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, the law becomes meaningless. A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought "to protect and enforce it without fear or favor," resist encroachments by governments, political parties, or even the interference of their own personal beliefs.[59]

VII.

Mr. Justice Adolfo S. Azcuna proposes an interpretation of the incremental penalty rule based on the phrases "shall be termed *prisión mayor* or *reclusión temporal*, as the case may be" and "for the purpose of the other provisions of this Code" found in the last sentence of said rule, *viz*:

> ARTICLE 315. Swindling (*Estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. **In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.** x x x (Emphasis supplied)

While this interpretation is plausible, *Gabres* should still be sustained because in construing penal statutes, as between two reasonable[60] but contradictory constructions, the one more

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[59] *Id.* at 251.

[60] The aforesaid phrases are broad enough to justify Mr. Justice Azcuna's interpretation, however, they are vague enough not to exclude the interpretation under *Gabres*. The said phrases may be so construed without being inconsistent with *Gabres*. (*See* Articles 90 and 92 of the RPC)

favorable to the accused should be upheld, which in this case is *Gabres*. The reason for this rule is elucidated in an eminent treatise on statutory construction in this wise:

It is an ancient rule of statutory construction that penal statutes should be strictly construed against the government or parties seeking to enforce statutory penalties and **in favor of the persons on whom penalties are sought to be imposed**. This simply means that words are given their ordinary meaning and that **any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute**. This canon of interpretation has been accorded the status of a constitutional rule under principles of due process, not subject to abrogation by statute.

The rule that penal statutes should be strictly construed has several justifications based on a concern for the rights and freedoms of accused individuals. Strict construction can assure fairness when courts understand it to mean that penal statutes must give a clear and unequivocal warning, in language people generally understand, about actions that would result in liability **and the nature of potential penalties**. A number of courts have said:

> … the rule that penal statutes are to be strictly construed … is a fundamental principle which in our judgment will never be altered. Why? Because the lawmaking body owes the duty to citizens and subjects of making unmistakably clear those acts for the commission of which the citizen may lose his life or liberty. Therefore, all the canons of interpretation which apply to civil statutes apply to criminal statutes, and in addition there exists the canon [of strict construction] …. The burden lies on the lawmakers, and inasmuch as it is within their power, it is their duty to relieve the situation of all doubts.

x x x x x x x x x

Additionally, strict construction protects the individual against arbitrary discretion by officials and judges. As one judge noted: "the courts should be particularly careful that the bulwarks of liberty are not overthrown, in order to reach an offender who is, but perhaps ought not to be, sheltered behind them."

But also, for a court to enforce a penalty where the legislature has not clearly and unequivocally prescribed it could result in judicial usurpation of the legislative function. One court has

noted that the reason for the rule is "to guard against the creation, by judicial construction, of criminal offenses not within the contemplation of the legislature." Thus the rule requires that before a person can be punished his case must be plainly and unmistakably within the statute sought to be applied. And, so, where a statute is open to more than one interpretation, it is strictly construed against the state. Courts further rationalize this application of the rule of strict construction on the ground that it was not the defendant in the criminal action who caused ambiguity in the statute. Along these same lines, courts also assert that since the state makes the laws, they should be most strongly construed against it.[61] (Emphasis supplied; citations omitted)

Thus, in one case, where the statute was ambiguous and permitted two reasonable interpretations, the construction which would impose a less severe penalty was adopted.[62]

WHEREFORE, the Decision of the Court of Appeals is *MODIFIED* with respect to the indeterminate penalties imposed on appellant for the five (5) counts of *estafa*, to wit:

(1) In Criminal Case No. 02-208372, the accused is sentenced to an indeterminate penalty of 4 years and 2 months of *prisión correccional* as minimum, to 9 years, 8 months and 21 days of *prisión mayor* as maximum.

(2) In Criminal Case Nos. 02-208373, 02-208375, and 02-208376, the accused is sentenced to an indeterminate penalty of 4 years and 2 months of *prisión correccional* as minimum, to 10 years, 8 months and 21 days of *prisión mayor* as maximum for each of the aforesaid three *estafa* cases.

(3) In Criminal Case No. 02-208374, the accused is sentenced to an indeterminate penalty of 4 years and 2 months of *prisión correccional* as minimum, to 12 years, 8 months and 21 days of *reclusión temporal* as maximum.

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[61] 3 Sutherland Statutory Construction § 59:3 (6th *ed*.)

[62] *Id*. citing *Buzzard v. Commonwealth*, 134 Va. 641, 114 S.E. 664 (1992).

In all other respects, the Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Carpio, Austria-Martinez, Carpio Morales, Tinga, Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Puno, C.J., pls. see dissent.

Quisumbing and *Chico-Nazario, JJ.,* join the Chief Justice in his dissenting opinion.

Corona, J., filed a separate opinion — RSP.

Azcuna, J., join the Chief Justice in his dissenting opinion, with separate opinion.

Velasco, Jr., and *Reyes, JJ.,* pls. see dissenting opinion.

SEPARATE OPINION

CORONA, *J.*:

> A man cannot suffer *more* punishment than the law assigns, but he may suffer *less*. – William Blackstone[1]
>
> For when lenity and cruelty play for a kingdom, the gentler gamester is the soonest winner. – William Shakespeare[2]

The application of the Indeterminate Sentence Law is one of the more complicated and confusing topics in criminal law. It befuddles not a few students of law, legal scholars and members of the bench and of the bar.[3] Fortunately, this case presents a

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[1] *Commentaries on the Laws of England* 92.

[2] King Henry The Fifth, Act 3, Scene 6, Line 11.

[3] A survey of criminal law jurisprudence will show that among the portions of the ruling of trial courts and the appellate court that are most commonly corrected by this Court is the application of the Indeterminate Sentence Law.

great opportunity for the Court to resolve with finality a controversial aspect of the application and interpretation of the Indeterminate Sentence Law. It is an occasion for the Court to perform its duty to formulate guiding and controlling principles, precepts, doctrines or rules.[4] In the process, the matter can be clarified, the public may be educated and the Court can exercise its symbolic function of instructing bench and bar on the extent of protection given by statutory and constitutional guarantees.[5]

The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. *In dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.[6]

Intimately intertwined with the *in dubio pro reo* principle is the rule of lenity. It is the doctrine that "a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment."[7]

Lenity becomes all the more appropriate when this case is viewed through the lens of the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness."[8] Since the goal of the

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In fact, even this Court has grappled with the matter. (*See People v. Moises*, [160 Phil. 845 (1975)] overruling *People v. Colman* [103 Phil. 6 (1958)]; *People v. Gonzales* [73 Phil. 549 (1942)] overturning *People v. Co Pao* [58 Phil. 545 (1933)] and *People v. Gayrama* (60 Phil. 796 (1934)] and *People v. Mape* [77 Phil. 809 (1947)] reversing *People v. Haloot* [64 Phil. 739 (1937)] which followed the *Co Pao* ruling.)

[4] *See Salonga v. Cruz Paño*, 219 Phil. 402 (1985).

[5] *Id.*

[6] *See* Section 14 (2), Constitution.

[7] Black's Law Dictionary, Eighth Edition (2004), p. 1359.

[8] *People v. Ducosin*, 59 Phil. 109 (1933).

Indeterminate Sentence Law is to look kindly on the accused, the Court should adopt an application or interpretation that is more favorable to the accused.

It is on the basis of this basic principle of criminal law that I respectfully submit this opinion.

THE BONE OF CONTENTION

The members of the Court are unanimous that accused-appellant Beth Temporada was correctly found guilty beyond reasonable doubt of the crimes of illegal recruitment and estafa by the Regional Trial Court of Manila, Branch 33 and the Court of Appeals. However, opinions differ sharply on the penalty that should be imposed on accused-appellant for estafa. In particular, there is a debate on how the Indeterminate Sentence Law should be applied in a case like this where there is an incremental penalty when the amount embezzled exceeds ₱22,000 (by at least ₱10,000).

In this connection, the relevant portion of Article 315 of the Revised Penal Code provides:

> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall in no case exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *prision mayor* to *reclusion temporal*, as the case may be.
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> x x x x x x x x x

On the other hand, the relevant portion of the Indeterminate Sentence Law provides:

> SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments,

the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

Jurisprudence shows that there are two schools of thought on the incremental penalty in estafa vis-à-vis the Indeterminate Sentence Law. Under the first school of thought, **the minimum term is fixed at *prision correccional*** while the maximum term can reach up to *reclusion temporal*. This is the general interpretation. It was resorted to in *People v. Pabalan*,[9] *People v. Benemerito*,[10] *People v. Gabres*[11] and in a string of cases.[12]

On the other hand, under the second school of thought, **the minimum term is one degree away from the maximum term and therefore varies as the amount of the thing stolen or embezzled rises or falls**. It is the line of jurisprudence that follows *People v. De la Cruz*.[13] Among the cases of this genre are *People v. Romero*,[14] *People v. Dinglasan*[15] and *Salazar v. People*.[16]

The Court is urged in this case to adopt a consistent position by categorically discarding one school of thought. Hence, our dilemma: which of the two schools of thought should we affirm?

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[9] 331 Phil. 64 (1996).

[10] 332 Phil. 710 (1996).

[11] 335 Phil. 242 (1997).

[12] These cases include *People v. Hernando,* 375 Phil. 1078 (1999), *People v. Menil,* 394 Phil. 433 (2000), *People v. Logan,* 414 Phil. 113 (2001), *People v. Gallardo,* 436 Phil. 698 (2002), *Garcia v. People,* 457 Phil. 713 (2003) and *Vasquez v. People,* G.R. No. 159255, 28 January 2008, 542 SCRA 520.

[13] 383 Phil. 213 (2000).

[14] 365 Phil. 531 (1999).

[15] 437 Phil. 621 (2002).

[16] 439 Phil. 762 (2002).

THE FIRST SCHOOL OF THOUGHT IS MORE FAVORABLE TO THE ACCUSED

Under the Indeterminate Sentence Law, in imposing a sentence, the court must determine two penalties composed of the "maximum" and "minimum" terms, instead of imposing a single fixed penalty.[17] Hence, the indeterminate sentence is composed of a maximum term taken from the penalty imposable under the Revised Penal Code and a minimum term taken from the penalty next lower to that fixed in the said Code.

The maximum term corresponds to "that which, in view of the attending circumstances, could be properly imposed under the rules of the [Revised Penal] Code." Thus, "attending circumstances" (such as mitigating, aggravating and other relevant circumstances) that may modify the imposable penalty applying the rules of the Revised Penal Code is considered in determining the maximum term. Stated otherwise, the maximum term is arrived at after taking into consideration the effects of attendant modifying circumstances.

On the other hand, the minimum term "shall be within the range of the penalty next lower to that prescribed by the [Revised Penal] Code for the offense." It is based on the penalty prescribed by the Revised Penal Code for the offense without considering in the meantime the modifying circumstances.[18]

The penalty prescribed by Article 315 of the Revised Penal Code for the felony of estafa (except estafa under Article 315(2)(d))[19] is *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over ₱12,000 but does not exceed ₱22,000. If it exceeds ₱22,000, the penalty provided in this paragraph shall be imposed in its maximum period. Moreover, where the amount embezzled

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[17] *People v. Ducosin*, *supra*.

[18] *People v. Gonzales*, *supra* note 3.

[19] The penalty for estafa under Article 315(2)(d) is provided under PD 818 (Amending Article 315 of the Revised Penal Code by Increasing the Penalties for Estafa Committed by Means of Bouncing Checks).

is more than ₱22,000, an incremental penalty of one year shall be added for every additional ₱10,000.

Thus, the Revised Penal Code imposes *prision correccional* in its maximum period to *prision mayor* in its minimum period (or a period of four years, two months and one day to eight years) if the amount of the fraud is more than ₱12,000 but not more than ₱22,000. If it exceeds ₱22,000, the penalty is imposed in its maximum period (or a period of six years, 8 months and 21 days to eight years) with an incremental penalty of one year for each additional ₱10,000 subject to the limitation that the total penalty which may be imposed shall in no case exceed 20 years.

Strictly speaking, the circumstance that the amount misappropriated by the offender is more than ₱22,000 is a qualifying circumstance. In *People v. Bayot*,[20] this Court defined a qualifying circumstance as a circumstance the effect of which is "not only to give the crime committed its proper and exclusive name but also to place the author thereof in such a situation as to deserve no other penalty than that especially prescribed for said crime." Applying the definition to estafa where the amount embezzled is more than ₱22,000, the amount involved *ipso jure* places the offender in such a situation as to deserve no other penalty than the imposition of the penalty in its maximum period plus incremental penalty, if warranted.[21] In other words, if the amount involved is more than ₱22,000, then the offender shall be sentenced to suffer the maximum period of the prescribed penalty with an incremental penalty of one year per additional ₱10,000.

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[20] 64 Phil. 269 (1937).

[21] This is similar to the effect of the circumstance that the offender intended to aid the enemy by giving notice or information that is useful to the enemy in the crime of correspondence with hostile country under Article 120(3) of the Revised Penal Code (which necessitates the imposition of *reclusion perpetua* to death) or of the circumstance that the offender be a public officer or employee in the crime of espionage under Article 117 of the Revised Penal Code (which requires the imposition of the penalty next higher in degree than that generally imposed for the crime).

However, *People v. Gabres* considered the circumstance that more than ₱22,000 was involved as a generic modifying circumstance which is material only in the determination of the maximum term, not of the minimum term:

> Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense." The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which into which it might be subdivided. **The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence**.
>
> The fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, **the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term** of the full indeterminate sentence. **This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused**. Since the penalty prescribed by law for the estafa charged against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00. (emphasis supplied)

If the circumstance that more than ₱22,000 was involved is considered as a qualifying circumstance, the penalty prescribed by the Revised Penal Code for it will be the maximum period of *prision correccional* in its maximum period to *prision mayor* in its minimum period. This has a duration of six years, 8 months

and 21 days to eight years. The penalty next lower (which will correspond to the minimum penalty of the indeterminate sentence) is the medium period of *prision correccional* in its maximum period to *prision mayor* in its minimum period, which has a duration of five years, five months and 11 days to six years, eight months and 20 days.[22]

If the circumstance is considered simply as a modifying circumstance (as in *Gabres*), it will be disregarded in determining the minimum term of the indeterminate sentence. The starting point will be *prision correccional* maximum to *prision mayor* minimum and the penalty next lower will then be *prision correccional* in its minimum to medium periods, which has a duration of six months and one day to four years and two months.

From the foregoing, it is more favorable to the accused if the circumstance (that more than ₱22,000 was involved) is to be considered as a modifying circumstance, not as a qualifying circumstance. Hence, I submit that the *Gabres* rule is preferable.

On the contrary, the second school of thought is invariably prejudicial to the accused. By fixing the minimum term of the indeterminate sentence to one degree away from the maximum term, the minimum term will always be longer than *prision correccional* in its minimum to medium periods.

Worse, the circumstance (that more than ₱22,000 was embezzled) is not a modifying circumstance but a part of the penalty, if adopted, will mean that the minimum term of the

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[22] *See* Article 61(5) of the Revised Penal Code. If the penalty is any one of the three periods of a divisible penalty, the penalty next lower in degree shall be that period next following the given penalty. Thus, the penalty immediately inferior to *prision mayor* in its maximum period is *prision mayor* in its medium period (*People v. Co Pao*, *supra* note 3). If the penalty is *reclusion temporal* in its medium period, the penalty next lower in degree is *reclusion temporal* in its minimum period (*People v. Gayrama*, *supra* note 3). **The penalty prescribed by the Revised Penal Code for a felony is a degree**. **If the penalty prescribed for a felony is one of the three periods of a divisible penalty, that period becomes a degree, and the period immediately below is the penalty next lower in degree** (Reyes, Luis B., The Revised Penal Code, Book Two, Fifteenth Edition [2001], p. 700).

indeterminate sentence will never be lower than the medium period of *prision correccional* in its maximum period to *prision mayor* in its minimum period, the penalty next lower to the maximum period of *prision correccional* in its maximum period to *prision mayor* in its minimum period.

THE SECOND SCHOOL OF THOUGHT AND ITS SHORTCOMINGS

The primary defect of the so-called second school of thought is that it contradicts the *in dubio pro reo* principle. It also violates the lenity rule. Instead, it advocates a stricter interpretation with harsher effects on the accused. In particular, compared to the first school of thought, it lengthens rather than shortens the penalty that may be imposed on the accused. Seen in its proper context, the second school of thought is contrary to the avowed purpose of the law that it purportedly seeks to promote, the Indeterminate Sentence Law.

The second school of thought limits the concept of "modifying circumstance" to either a mitigating or aggravating circumstance listed under Articles 13 and 14 of the Revised Penal Code. It contends that the respective enumerations under the said provisions are exclusive and all other circumstances not included therein were intentionally omitted by the legislature. It further asserts that, even assuming that the circumstance that more than ₱22,000 was embezzled may be deemed as analogous to aggravating circumstances under Article 14, the said circumstance cannot be considered as an aggravating circumstance because it is only in mitigating circumstances that analogous circumstances are allowed and recognized.[23] The second school of thought then insists that, since the circumstance that more than ₱22,000 was involved is not among those listed under Article 14, the said circumstance is not a modifying circumstance for purposes of the Indeterminate Sentence Law.

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[23] In particular, Article 13(10) expressly provides that "any other circumstances of a similar nature and analogous to those above mentioned" are treated as mitigating. Article 14, however, does not have a similar provision.

The second school of thought therefore strictly construes the term "attending circumstances" against the accused. It refuses to recognize anything that is not expressed, takes the language used in its exact meaning and admits no equitable consideration.

To the point of being repetitive, however, where the accused is concerned, penal statutes should be interpreted liberally, not strictly.

The fact that there are two schools of thought on the matter by itself shows that there is uncertainty as to the concept of "attending" or "modifying" circumstances. Pursuant to the *in dubio pro reo* principle, the doubt must be resolved in favor of the accused and not against him.

Moreover, laws must receive sensible interpretation to promote the ends for which they are enacted.[24] The meaning of a word or phrase used in a statute may be qualified by the purpose which induced the legislature to enact the statute. The purpose may indicate whether to give a word or phrase a restricted or expansive meaning.[25] In construing a word or phrase, the court should adopt the interpretation that best serves the manifest purpose of the statute or promotes or realizes its object.[26] Where the language of the statute is fairly susceptible to two or more constructions, that which will most tend to give effect to the manifest intent of the lawmaker and promote the object for which the statute was enacted should be adopted.[27] Taken in conjunction with the lenity rule, a doubtful provision of a law that seeks to alleviate the effects of incarceration ought to be given an interpretation that affords lenient treatment to the accused.

The Indeterminate Sentence Law is intended to favor the accused, particularly to shorten his term of imprisonment.[28]

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[24] *Lo Cham v. Ocampo*, 77 Phil. 636 (1946).

[25] *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947).

[26] *Muñoz & Co. v. Hord*, 12 Phil. 624 (1909).

[27] *Ty Sue v. Hord*, 12 Phil. 485 (1909).

[28] *People v. Nang Kay*, 88 Phil. 515 (1951).

The reduction of his period of incarceration reasonably helps "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." The law, being penal in character, must receive an interpretation that benefits the accused.[29] This Court already ruled that "in cases where the application of the law on indeterminate sentence would be unfavorable to the accused, resulting in the lengthening of his prison sentence, said law on indeterminate sentence should not be applied."[30] In the same vein, if an interpretation of the Indeterminate Sentence Law is unfavorable to the accused and will work to increase the term of his imprisonment, that interpretation should not be adopted. It is also for this reason that the claim that the power of this Court to lighten the penalty of lesser crimes carries with it the responsibility to impose a greater penalty for grave penalties is not only wrong but also dangerous.

Nowhere does the Indeterminate Sentence Law prescribe that the minimum term of the penalty be no farther than one degree away from the maximum term. Thus, while it may be true that the minimum term of the penalty in an indeterminate sentence is generally one degree away from the maximum term, the law does not mandate that its application be rigorously and narrowly limited to that situation.

THE PROPER INDETERMINATE PENALTIES IN THESE CASES

From the above disquisition, I respectfully submit that the prevailing rule, the so-called first school of thought, be followed. With respect to the indeterminate sentence that may be imposed on the accused, I agree with the position taken by Madame Justice Consuelo Ynares-Santiago.

Accordingly, I vote that the decision of the Court of Appeals be *AFFIRMED* with the following modifications:

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[29] *Id*.

[30] *Id*.

(1) in Criminal Case No. 02-208372, the accused be sentenced to an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum, to 9 years, 8 months and 21 days of *prision mayor* as maximum;

(2) in Criminal Case Nos. 02-208373, 02-208375, and 02-208376, the accused be sentenced to an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum, to 10 years, 8 months and 21 days of *prision mayor* as maximum for each of the aforesaid three estafa cases and

(3) in Criminal Case No. 02-208374, the accused be sentenced to an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum, to 12 years, 8 months and 21 days of *prision mayor* as maximum.

DISSENTING OPINION

PUNO, *C.J., dissenting:*

The Court today basks magnanimous in its application of the rule that penal laws should be construed in favor of the accused. Although I acknowledge that the application of this rule in the interpretation of the Indeterminate Sentence Law (ISL) is properly aligned with the fundamental principle and purpose of the ISL to uplift and redeem human material and to prevent unnecessary and excessive deprivation of personal liberty and economic usefulness,[1] I am constrained to disagree with the reasoning of the majority.

In lieu of a straight penalty, the ISL provides for guidelines for the determination of an indeterminate sentence, which shall be composed of a maximum and a minimum; thus, for crimes punishable under the Revised Penal Code (RPC), Section 1 of the ISL provides that "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be

[1] *People v. Nang Kay*, 88 Phil. 515. (1951).

properly imposed under the rules of the said Code, and the **minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.**"[2] (emphasis supplied)

While there is no dispute as to the determination of the maximum of the indeterminate sentence for the crime of *estafa*, the ponente puts into issue the computation of the minimum when the crime committed calls for the computation of additional or incremental penalties.

The penalty prescribed by the Code for the crime of *estafa* is worded as follows:

> Article 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. (emphasis supplied)

The problematic portion of Section 1 of the ISL in relation to the above-quoted provision is the phrase "prescribed by the Code," which is essential in determining the range within which the minimum of the indeterminate sentence can be pegged. As can be observed from Article 315, the penalty prescribed for *estafa* in cases involving amounts exceeding ₱22,000 may be interpreted in two ways: first, that the term "penalty prescribed" in Section 1 of the ISL merely refers to the phrase "**the penalty provided in this paragraph,**" which refers to "*prision correccional* in its maximum period to *prision mayor* in its

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[2] RPC, Section 1.

minimum period", without as yet considering the addition of one year for each additional ₱10,000 involved; or second, that the "penalty prescribed" denotes the whole phrase "**the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos.**"

In essence, the existing jurisprudence[3] which the *ponencia* staunchly defended and upheld, adheres to the first interpretation. Under this view, since the "penalty prescribed" by the RPC for *estafa* is *prision correccional* maximum to *prision mayor* minimum, the range of the penalty within which the minimum of the indeterminate sentence would be determined would be that degree next lower thereto, or *prision correccional* in its minimum to medium periods. Accordingly, the incremental penalty or the additional number of years for the corresponding increase in the amounts involved in the fraud is merely considered as a "modifying circumstance" which is considered in the determination of the maximum-but not the minimum-of the indeterminate sentence. Hence, the range within which the minimum of the indeterminate sentence under the current computation can be pegged is permanently set at *prision correccional* in its minimum to medium periods.

On the other hand, the second interpretation provides that the minimum of the indeterminate sentence should be arrived at by descending one degree down the scale from the principal penalty, after factoring in the incremental penalty into the same. In other words, for purposes of determining the minimum of the indeterminate sentence, the so-called "prescribed penalty" for frauds involving amounts exceeding ₱22,000 denotes a penalty which has already been computed according to the number of years in excess of ₱22,000. Necessarily, the distance between the maximum and the minimum shall always be only one degree away.

I find that this second interpretation is more in keeping with the intent and letter of the ISL and the RPC.

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[3] The "First school of Thought", according to the ponencia.

It is a basic rule in statutory construction that care should be taken that every part of a statute be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole; for taken in solitude, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when a word or phrase is considered with those with which it is associated.[4]

In our jurisdiction, "incremental penalty" as used in relation to crimes against property now refers to the phrase "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". I submit that for purposes of determining the minimum of the indeterminate sentence, the "penalty prescribed" for *estafa* should include the incremental penalty, since the penalty for *estafa*, as that in theft, hinges on the value or amount involved.[5]

People v. Gabres[6] was the first case which expounded on the treatment of the incremental penalty as a modifying circumstance in the computation of the penalty for *estafa* involving amounts exceeding ₱22,000.00. It explained thus:

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the

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[4] *Equatorial Realty Development, Inc. v. Sps. Desiderio & Frogozo*, G.R. No. 128563, March 25, 2004, 426 SCRA 271.

[5] *People v. Concepcion*, G.R. No. 131477, April 20, 2001, 357 SCRA 168, 182.

[6] G.R. Nos. 118950-54, February 6, 1997, 267 SCRA 581.

periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

The fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the *estafa* charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00. (emphasis supplied)

To my mind, the rationale in **Gabres** is flawed. A plain reading of the provision on *estafa* yields the conclusion that the law, as in the crime of theft,[7] intended a graduated penalty, *viz*.: for *estafa* involving the amount of ₱200 and below, the penalty shall be *arresto mayor* in its medium and maximum periods; for amounts over ₱200 but not exceeding ₱6,000, *arresto mayor* in its maximum period to *prision correccional* in its minimum period; for amounts over ₱6,000 but not exceeding ₱12,000, *prision correccional* in its minimum and medium periods; and finally, the penalty subject of the controversy herein, "*prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over ₱12,000 but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years." Verily, the manner in

[7] *People v. Concepcion, supra* note 5.

which Article 315 was crafted lends an insight into the intention of the RPC, which is to ensure that the penalty for the crime committed be commensurate to the amount of the fraud. Hence, I submit that the so-called incremental penalty is exactly that-an incremental penalty-and not a modifying circumstance. Short of the RPC enumerating all the gradations of the penalty for each amount that might be involved, the Code merely provided a formula in order to arrive at the prescribed penalty. Nonetheless, a prescribed penalty had been intended, and that prescribed penalty can still be easily derived after a mechanical application of the given formula. In fact, this is not the first time we treated a modifying circumstance as separate and distinct from the incremental penalty, thus, in the case of ***People v. Hernando***:[8]

> On the other hand, the minimum of the indeterminate sentence shall be within the range of the penalty next lower in degree to that prescribed by the Code for the offense, **without first considering any modifying circumstance nor the incremental penalty for the amount in excess of twenty two thousand (₱22,000.00) pesos**. Such penalty is *prision mayor*, with a duration of six (6) years and one (1) day to twelve (12) years. (emphasis supplied)

This position is boosted by the qualifier at the end of the provision on the penalty for frauds involving amounts exceeding ₱22,000. To revisit Article 315:

> Article 315. *Swindling* (*estafa*).— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed

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[8] G.R. No. 125214, October 28, 1999, 317 SCRA 617.

prision mayor or *reclusion temporal*, as the case may be. (emphasis supplied.)

As can be seen, the RPC attempts to limit the penalty prescribed, *i.e.*, the computed penalty, to a maximum of twenty years. Furthermore, the computed penalty is mandated to be termed *prision mayor* or *reclusion temporal*, as the case may be, in keeping with the statement of the prescribed penalties for frauds of lower amounts. Had the law intended the incremental penalty to be a modifying circumstance, there would have been no sense in doing so. The more plausible explanation, therefore, is that the RPC is prescribing a penalty for frauds exceeding ₱22,000. On this note, therefore, I am in agreement with the view that the penalty of *prision correccional* maximum to *prision mayor* minimum provided in the Code is merely the initial prescription or the starting point — but not the complete penalty — which should be the basis for determining the range of "the penalty next lower than that prescribed by the Code" in order to determine the minimum of the indeterminate sentence.

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The rational backbone and main justification of the first interpretation is founded upon the rule in statutory construction that penal laws should be construed in favor of the accused. Mindful as I am of the woes and wails of our prisoners, I cannot bring myself to ignore the error in this reasoning.

It must be recalled that the construction in favor of the accused is rooted in the presumption of innocence which stems from the constitutional right to due process. Hence, the strict construction against the government as regards penal laws pertains to cases in which the accused stands to be deprived of either life, liberty or property.

In the instant case, I find that the application of this rule is somewhat strained. For one, the threat of losing life, liberty or property without due process of law is more apparent than real, because the subjects of the ISL are no longer merely accused individuals. On the contrary, they are already convicted felons whose guilt had already been proven beyond reasonable doubt. Hence, I do not see how they can still be accorded the presumption of innocence.

Further, I am in doubt as to the characterization of the ISL as a penal law that could warrant a presumption of innocence for the accused. A penal law is an act of the legislature that prohibits certain acts and establishes penalties for its violations.[9] A closer look at the ISL, however, reveals that it does not make any act punishable. Its complete title is telling: "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." Moreover, the classification of the ISL as penal was made arbitrarily and without clear legal basis. ***People v. Nang Kay***,[10] which cited the Corpus Juris Secundum, points to the ***U.S. case of State v. Groos***[11] as its authority for saying that the ISL is a penal statute. A perusal of the said U.S. case reveals, however, that the penal character of the ISL was not put into issue in that case, and that it was merely assumed that the ISL is a penal law. Accordingly, I submit that the presumption of innocence could not be used in granting leniency in the computation of the minimum in the ISL.

Finally, even if we concede that the ISL is a legislation akin to an act of grace geared towards the rehabilitation of criminals, and it being so, the intention of the lawmakers must be given effect, I still stand firm that the existing interpretation is erroneous and reeks of disrespect to the sacrosanct principles of justice and fairness.

It must be remembered that a statute's clauses and phrases must not be taken separately, but in relation to the statute's totality. Further, each statute must be construed as to harmonize it with the pre-existing body of laws. Provisions of statutes must be reconciled, unless clearly repugnant.[12]

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[9] *Yu Oh v. Court of Appeals*, G.R. No. 125287, June 6, 2003, 403 SCRA 300, 308, citing *Lacson v. Executive Secretary, et al.*, G.R. No. 128096, January 20, 1999, 301 SCRA 298, 323.

[10] No. L-3565, 88 Phil. 515, 520 (1951).

[11] 110 Conn. 403, 148 A. 350, January 6, 1930.

[12] *Supra* note 4.

In the present case, it is clear that it could not have been the intention of the RPC to do away with the gradations of penalty for the crime of *estafa*. Yet that is precisely what the majority has decided to do today. To be sure, the existing interpretation disturbs the ladderized penalty scheme provided in the RPC and grants an undeserved protection to felons convicted of frauds involving higher amounts. In effect, this puts in the same category those who merely committed frauds involving lower amounts, thus, defeating the letter and intent of the RPC and the ISL. For these reasons, I am duty bound to register my dissent.

IN VIEW WHEREOF, I vote to *AFFIRM* the decision of the Court of Appeals.

AZCUNA, *J., separate dissenting:*

I join the Chief Justice in his dissent.

The penalty for estafa is a unique one, in a class by itself. The penalty prescribed by law depends on the amount involved. If it does not exceed ₱22,000, it is the penalty stated in par. 2(a) of Art. 315 of the Revised Penal Code, *i.e., prision correccional* maximum to *prision mayor* minimum. If it exceeds ₱22,000, it is that penalty plus one year for every ₱10,000, but in no case more than 20 years. Then the law states that in that event the penalty should be "termed" *prision mayor* or *reclusion temporal*, "as the case may be."

Accordingly, if the amount involved is, say, ₱500 Million, the penalty prescribed by law is *reclusion temporal*. Hence, the penalty one degree lower than that is *prision mayor* and it is within this one-degree lower penalty, *i.e., prision mayor*, that the minimum of the indeterminate sentence is to be fixed.

VELASCO, Jr., *J., dissenting:*

I join the dissent of Chief Justice Reynato S. Puno.

It is clear that if the amount of fraud is over PhP 12,000 but does not exceed PhP 22,000, the penalty prescribed by Article 315 of the Revised Penal Code is *prision correccional*

in its maximum to *prision mayor* in its minimum. Applying the Indeterminate Sentence Law (ISL), the RPC prescribed penalty will constitute the maximum period and the penalty next lower is *prision correccional* in its minimum to medium periods (6 months and 1 day to 4 years and 2 months). The ISL gives the judge the discretion in fixing the minimum penalty within the penalty next lower than the RPC prescribed penalty. Thus, the judge for an estafa involving over PhP 12,000 but not exceeding PhP 22,000 can prescribe the penalty of 4 years and 2 months as minimum period.

On the other hand, for the crime of estafa involving an amount exceeding PhP 22,000, which can go as high as several millions of pesos, the majority view posits that the RPC prescribed penalty is still *prision correccional* in its maximum period to *prision mayor* in its minimum period as the minimum period and the adjusted penalty based on the formula of 1 year per every PhP 10,000 but not to exceed 20 years is the maximum period. Thus following this line of reasoning, it admits that the penalty next lower would be *prision correccional* in its minimum and medium periods. Applying the ISL, the minimum period for an estafa of over PhP 22,000 can very well be 4 years and 2 months—exactly the same minimum penalty for estafa involving over PhP 12,000 but not exceeding PhP 22,000.

This result would be at war with the principle that the penalty for estafa is strictly based on the value or amount involved.1 This doctrine is captured in the graduation of penalties under Article 315(1), thus:

Article 315	**Amount**	**Penalty**
4th par.	Less than ₱200.00	*Arresto Mayor* in its medium and maximum period
3rd par.	Over ₱200.00 but less than ₱6,000.00	*Arresto Mayor* in its maximum period to *prision correccional* in its minimum period
2nd par.	Over ₱6,000.00 but	*Prision correccional* in

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	less than ₱12,000.00	its minimum and medium period
1st par.	Over ₱12,000.00 but less than ₱22,000.00	*Prision correccional* in its maximum period to *prision mayor* in its minimum period
1st par.	Over ₱22,000.00 add 1 year	(should be *Prision Mayor* or *Reclusion Temporal*)

It is obvious that the intent of the legislators in enacting Art. 315 of the RPC is to impose a penalty for estafa that is graduated—the graduation being based on the amount of the fraud. The higher the amount, the higher is the period of imprisonment. If we apply the First School of Thought which the majority adopted, then the minimum period under ISL for estafa from less than PhP 12,000 up to PhP 22,000 and the estafa exceeding PhP 22,000 will always be taken from within the range of *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Thus, a swindler of a lesser amount (from PhP 12,000 to PhP 22,000) could be imprisoned for the same minimum term as a swindler of millions. This should not be the case. Justice demands that crime be punished and that the penalty imposed be commensurate with the offense committed.[2]

I submit that principle of proportionality between the offense committed and the penalty imposed finds application in determining the penalty for the crime of estafa. The penalty for estafa must always be commensurate with the amount defrauded.[3] If the concept of proportionality between the offense committed and

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[1] *U.S. v. Fernandez*, 9 Phil. 199 (1907); *U.S. v. Leaño*, 6 Phil. 368 (1906).

[2] *Echegaray v. Secretary of Justice*, 310 SCRA 96, 138 (1999), Separate Opinion of J. Vitug citing Record of the House of Representatives *re*: House Bill No. 62, which later evolved into the Death Penalty Law, R.A. 7659, now repealed by R.A. 9346.

[3] *People v. Pascua, Avigueteroand Soliven*, G.R. No. 125081, October 3, 2001; *People v. Benemerito*, G.R. No. 120389, November 21, 1996.

the sanction imposed is not strictly adhered to, then unfairness and injustice will inevitably result.

It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result.[4] The law does not intend an absurdity or that an absurd consequence shall flow from its enactment. If the words of the statute are susceptible of more than one meaning, the one that has a logical construction should be adopted over the one that will produce an absurdity. Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.[5] Indeed a ridiculous situation will arise if a swindler of millions and a con man of less than PhP 22,000 will receive the same minimum sentence of 4 years and 2 months.

Worse, not only is the swindler of millions entitled to a very low penalty, he might very well even be qualified to avail of probation. A suspended execution of the penalty for a "big time" swindler could not have been intended by the framers of the Revised Penal Code.

The majority anchors its position on the postulate that all doubts should be resolved in favor of the accused. This principle however cannot prevail over the purpose or intent of the law. Undeniably the intendment of the law is to impose on the swindlers a higher penalty depending on the amount of fraud. This is easily deducible from the formula of imposing an additional one year of imprisonment for every PhP 10,000 over the threshold amount of PhP 22,000. If such was not the intent, then the RPC could have easily provided a penalty of *prision mayor* in its medium and maximum periods for estafa involving more than PhP 22,000 and above. The legislators, however, insisted on a higher penalty, clearly revealing an intent impose a harsher punishment for big time "*estafadors*."

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[4] *Ang Giok Chip v. Springfield*, No. L-33637, December 31, 1931; *Paras v. COMELEC*, G.R. No. 123169, November 4, 1996.

[5] *Corsico, Jr. v. NLRC*, G.R. No. 118432, May 23, 1997.

Another point that has to be elucidated is the proposition of the majority that the maximum period of the penalty for estafa of more than PhP 22,000 is determined by using the formula of one (1) year for every additional PhP 10,000 while the minimum period is *prision correccional* in its maximum period to *prision mayor* in its minimum period. This is the only penalty, if accepted as correct, that has a fixed maximum period but a minimum period which is composed of two (2) periods—*prision correccional* in its maximum to *prision mayor* in its minimum period. Nowhere in the RPC or special laws can we find a penalty prescribed in that manner. Undoubtedly, this is not the prescribed penalty for estafa of more than PhP 22,000.

I concur with the view that Art. 315(1) that the penalty for estafa of more than PhP 22,000 is a single fixed penalty of either *prision mayor* or *reclusion temporal*.

I submit that the starting point for the computation of estafa of over PhP 22,000 should be the penalty of eight (8) years based on the phrase in Article 315(1) that "the penalty provided in this paragraph shall be imposed in the maximum." 8 years of imprisonment is *prision mayor* in its minimum period. Then we apply the formula of adding one (1) year for every additional PhP 10,000. To illustrate:

Amount of Fraud	**Imprisonment**
Over 22T to 32T	9 years (*prision mayor*)
Over 32T to 42T	10 years
Over 42T to 52T	11 years
Over 52T to 62T	12 years
Over 62T to 72T	13 years (*reclusion temporal*)
Over 72T to 82T	14 years
Over 82T to 92T	15 years
Over 92T to 102T	16 years

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Over 102T to 112T	17 years
Over 112T to 122T	18 years
Over 122T to 132T	19 years
Over 132T to 142T	20 years

If the amount of the fraud is from PhP 22,001 to PhP 62,000 then the penalty is simply *prision mayor*. If the threshold PhP 62,000 is reached, then the penalty is *reclusion temporal*. The penalty cannot by express terms of the law, go higher than *reclusion temporal* in its maximum of 20 years. In other words, the penalty for estafa involving an amount over PhP 22,000 up to PhP 142,000 and above is a **single fixed penalty or straight penalty** of either *prision mayor* or *reclusion temporal* depending on the amount. This is clear from Art. 315, 1st par.:

> In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be; x x x (emphasis supplied.)

Given the above perspective, it is quite easy to compute the ISL. If the penalty is *prision mayor,* the penalty next lower to that fixed by the RPC is *prision correccional*. If the penalty is *reclusion temporal*, then the penalty next lower is *prision mayor*. The judge will determine the maximum period by taking into consideration the attendant circumstances and the minimum shall be within the range of the next lower penalty.

With the foregoing mode of computation, for estafa of more than PhP 22,000 up to PhP 62,000, the penalty is 12 years of *prision mayor*. Applying the ISL, the penalty next lower is *prision correccional*—6 months, 1 day to 6 years. The judge has the discretion to fix the minimum within the range of *prision correccional*. However, since the maximum minimum penalty under ISL for estafa involving PhP 12,000 but not to exceed PhP 22,000, is 4 years and 2 months, then the minimum period for estafa of an amount over PhP 22,000 can be made higher than 4 years and 2 months. This way, the imposition of penalties

under Art. 315(1) will be in harmony with the principle of proportionality that the penalty must be commensurate to the gravity of the offense and in line with the graduation of penalties under Art. 315.

For estafa involving more than PhP 62,000, then the penalty is a single fixed penalty of *reclusion temporal* while the penalty next lower is *prision mayor*. Thus the minimum period is any penalty within 6 years and 1 day to 12 years. The minimum period will undoubtedly be higher than the minimum period of 4 years and 2 months which has been fixed for estafa involving more than PhP 12,000 but not exceeding PhP 22,000. This manner of computation would be more in keeping with the intent of the framers of the Revised Penal Code.

Hence, my dissent.

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

THIS is the second time my *ponencia* on a significant issue narrowly missed the majority vote. I thus write this dissent not without hope that it would one day resurrect given a second look or another chance in a similar case.

ANG Hukuman ay dapat maging mapagbantay at nakahandang maggawad ng pinakamabigat na parusa ng batas sa mga nambibiktima ng mga kapus-palad na pinapangakuan ng mas mabuting buhay, na hindi naman totoo, para lamang ipakain sa kanilang mga pangarap.

The Court must be vigilant and should punish, to the fullest extent of the law, those who prey upon the desperate with empty promises of better lives, only to feed on their aspirations.[1]

This exhortation from the eminent Justice Florenz Regalado is at center in this appeal from the Decision[2] of the Court of

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[1] *People v. Ortiz-Miyake*, G.R. Nos. 115338-39, September 16, 1997, 279 SCRA 180.

[2] *Rollo*, pp. 3-17. Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Amelita G. Tolentino and Aurora Santiago-Lagman, concurring.

Appeals (CA) affirming with modification appellant Beth Temporada's conviction for large scale illegal recruitment and five counts of *estafa* by the Regional Trial Court (RTC), Branch 33, Manila.[3]

The Facts

Alternative Travel and Tours Corporation (ATTC) is a land-based recruitment agency with principal business address at Dela Rosa Street, Makati City. The agency later relocated its offices to the Discovery Plaza in Malate, Manila. From September 2001 through January 2002, ATTC was able to recruit for employment abroad private complainants Evelyn Estacio, Soledad Atte, Luz Minkay, Dennis Dimaano, and Rogelio Legaspi.

ATTC promised complainants that they would be deployed to Singapore, Hongkong, and Sri Lanka, either as factory workers or technicians, upon payment of their placement fees. In turn, the applicants paid the agency, through its officers and employees Rosemarie "Baby" Robles, Bernadette Miranda, Nenita Catacotan, Jojo Resco, and appellant Beth Temporada, varying amounts ranging from ₱57,000.00 to P88,520.00.

None of complainants was deployed. Alarmed, they demanded the refund of their placement fees. Despite repeated demands, the agency refused and failed to heed the claims for reimbursement.

On complaint of Estacio, Atte, Minkay, Dimaano, and Legaspi, all said officers and employees of ATTC, namely, Robles, Miranda, Catacotan and Resco, together with appellant Temporada, were indicted for illegal recruitment in large scale, defined and penalized under Article 38 (a) of Presidential Decree (P.D.) No. 1412, otherwise known as the Labor Code of the Philippines, as amended by Republic Act (R.A.) No. 8042, the Migrant Workers Act of 1995. Five separate informations for *estafa* were likewise lodged against appellant Temporada and her cohorts.

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[3] CA *rollo*, pp. 26-34. Penned by Presiding Judge Reynaldo G. Ros.

The information for illegal recruitment in large scale (Criminal Case No. 02-208371) bears the following accusation:

That in or about and during the period comprised between the months of September 2001 and January 2002, inclusive, in the City of Manila, Philippines, the said accused, representing themselves to have the power and capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there wilfully and unlawfully for a fee, recruit and promise employment to ROGELIO A. LEGASPI, JR., DENNIS T. DIMAANO, EVELYN V. ESTACIO, SOLEDAD B. ATTE and LUZ T. MINKAY without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly or indirectly from said complainant the amount of ₱57,600.00, ₱66,520.00, ₱88,520.00, ₱69,520.00, ₱69,520.00, respectively, as placement fees in consideration for their overseas employment, which amounts are in excess of or greater than that specified in the schedule of allowable fees prescribed of the POEA and without valid reasons and without the fault of the said complainants, failed to actually deploy them and failed to reimburse them the expenses they incurred in connection with the documentation and processing of their papers for purposes of their deployment.

Contrary to law.[4]

The informations in Criminal Case Nos. 02-208373, 02-208374, 02-208375, and 02-208376, charging appellant Temporada with *estafa* in each case, contain substantially the same allegations as those in Criminal Case No. 02-208372, except as to the name of the person defrauded and amount embezzled, *viz*.: (a) Dennis T. Dimaano, P66,520.00 in Criminal Case No. 02-208373; (b) Evelyn T. Estacio, P88,520.00 in Criminal Case No. 02-208374; (c) Soledad B. Atte, P69,520.00 in Criminal Case No. 02-208375; and (d) Luz T. Minkay, P69,520.00 in Criminal Case No. 02-208376.

The Information in Criminal Case No. 02-208372 recites:

That in or about and during the period comprised between November 23, 2001 and January 14, 2002, inclusive, in the City of

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[4] *Id*. at 6.

Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously defraud ROGELIO A. LEGASPI, JR. in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said ROGELIO A. LEGASPI, JR. prior to and even simultaneous with the commission of the fraud, to the effect that they have the power and capacity to recruit and employ ROGELIO A. LEGASPI, JR. as technician in Singapore and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said ROGELIO A. LEGASPI, JR. to give and deliver, as, in fact, he gave and delivered to said accused the amount of ₱57,600.00 on the strength of said manifestations and representations said accused well knowing that the same were false and fraudulent and were made solely for the purpose of obtaining, as, in fact, they did obtain the amount of ₱57,600.00, which amount, once in their possession, with intent to defraud, they wilfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of said ROGELIO A. LEGASPI, JR. in the aforesaid amount of ₱57,600.00, Philippine Currency.

Contrary to law.[5]

Only appellant was apprehended. All four other accused remain at large to this day. The cases were consolidated but trial was held only against appellant after she entered a plea of innocence to all charges during her arraignment.

The evidence for plaintiff-appellee was supplied by the combined testimonies of private complainants Evelyn Estacio, Soledad Atte, Luz Minkay, Dennis Dimaano, and Rogelio Legaspi.

Rogelio Legaspi testified that he applied for overseas employment in Singapore as a technician through ATTC. On November 24, 2001, he gave accused Bernadette Miranda the amount of ₱35,000.00 as processing fee for his application. On January 14, 2002, he gave appellant Temporada ₱10,000.00 for his *visa* application. Appellant introduced herself as ATTC General Manager and repeatedly assured him of a job as technician

[5] *Id.* at 8.

in Singapore. To ensure his early departure, appellant required him to pay an additional amount of P10,000.00 for the air fare. Legaspi promptly complied.[6]

Soledad Atte applied as a factory worker in Hongkong. Together with private complainant Luz Minkay, she was introduced to ATTC by a certain Emily Sagalongos. On October 18, 2001, she paid ATTC, through accused Bernadette Miranda, the amount of ₱30,000.00 as placement fee. This was followed by a payment of ₱32,000.00 on December 13, 2001 and then again by a sum of ₱20,000.00 two days later, or on December 15, 2001. Atte disclosed that appellant gave her innumerable assurances that ATTC had the capacity to send her abroad.[7]

Luz Minkay, for her part, testified that she paid the P30,000.00 placement fee required by ATTC. She was also promised work as a factory worker in Hongkong. According to her, appellant demanded that she pay an additional amount of money in exchange for the immediate processing of her application. So, Minkay gave accused Bernadette Miranda, in the presence of appellant, the amount of ₱16,000.00 on December 13, 2001. On December 15, 2001, she gave an additional P20,000.00 to Miranda and Temporada.[8]

Private complainant Evelyn Estacio was recruited for a posting in Sri Lanka by accused Baby Robles. On September 21, 2001, Estacio gave Robles ₱40,000.00 as placement fee. Despite her submission of all the pertinent documents required of her, she failed to depart for abroad as scheduled. Appellant nevertheless assured her that her documents were already transmitted to the Sri Lankan employer, although her deployment was merely delayed. Appellant subsequently told her that she would instead be deployed to Hongkong as a factory worker. In turn, Estacio gave appellant and accused Miranda the amount of ₱10,000.00.

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[6] TSN, March 14, 2003, pp. 4-12.

[7] TSN, April 4, 2003, pp. 4-15.

[8] *Id.* at 34-43.

She likewise gave accused Resco the amounts of ₱2,600.00 and ₱920.00 for medical and passport expenses, respectively.[9]

Dennis Dimaano disclosed that accused Nenita Catacotan persuaded him to apply for a Hongkong factory worker position at ATTC. On November 16, 2001, he went to the ATTC offices in Malate, Manila, to formalize his application. It was there where he met accused Robles. Robles assured him that there was an available slot at their Hongkong principal for him. The next day or on November 17, 2001, he handed ₱40,000.00 to accused Miranda, in the presence of accused Catacotan and appellant. On December 14, 2001, he was surprised to learn from appellant that he and several others would not be able to depart for abroad for lack of a prior booking at Philippine Airlines. Despite repeated follow-ups with appellant, Dimaano was never deployed to Hongkong.[10]

Expectedly, appellant offered a disparate narration of the facts. The defense version, as presented by the Public Attorney's Office (PAO), is as follows:

BETH TEMPORADA testified that her son Cesar Temporada also applied with ATTC after being prodded by her friends Cora and Vilma. She claimed that together with her son, they were brought to Baby Robles and were told to prepare P80,000 for employment abroad. Incidentally, the brother of accused Baby Robles, Reinier Yulo, her long-time acquaintance and a former neighbor, arrived at ATTC and introduced her to Baby Robles as a trusted campaign leader of the Aguilar clan of politicians from Las Piñas. After the introduction, accused Baby Robles requested her to stay in the ATTC office from morning to afternoon everyday because she was unemployed then. She was also convinced to accept the request so she can personally follow-up her son's application. It was because of the constant follow-ups and her daily stay at ATTC that she met the complainants Atte and Minkay, who were with their agent accused Emily Sagalongos. She insisted that she only offered help to complainants Soledad Atte, Luz Minkay and Evelyn Estacio. As to the receipt issued to Legaspi. (Exhs. "E" & "1" and submarkings), she explained that she was, in

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[9] TSN, May 5, 2003, pp. 3-19.

[10] TSN, May 21, 2003, pp. 7-22.

fact, surprised to see her name in the receipt although she remembered that site advised accused Baby Robles to issue the receipt. Accused Baby Robles assured her that she only served as a witness to the transaction and that it was a sort of orientation for her in case she will be hired as a staff.

She further declared that her son was able to leave the country on January 11, 2002 after giving the amount of ₱80,000.00 and submitting the necessary documents. But the latter returned ten (10) days after his departure as there was no job for him in Hongkong. She admitted, however, that she did not press charges against accused Baby Robles, and/or ATTC, nor did she request for the refund of the money as according to her, "we were not used to trouble."[11]

RTC and CA Dispositions

On May 14, 2004, the RTC convicted appellant as charged, disposing as follows:

WHEREFORE, the prosecution having established the GUILT of accused Beth Temporada BEYOND REASONABLE DOUBT, judgment is hereby rendered CONVICTING the said accused, as principal of the offenses charged and she is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (₱500,000.00 for illegal recruitment; and the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum, to nine (9) years and one day of *prision mayor*, as maximum for the *estafa* committed against complainant Rogelio A. Legaspi, Jr.; the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum, to ten (10) years and one day of *prision mayor*, as maximum for the *estafa* committed against complainants Dennis Dimaano, Soledad Atte and Luz T. Minkay; and the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum, to eleven (11) years and one day of *prision mayor*, as maximum for the *estafa* committed against Evelyn Estacio.

The accused is also ordered to pay, jointly and severally, the complainants' actual damages as follows:

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[11] CA *rollo*, pp. 57-58.

1.	Rogelio A. Legaspi, Jr.	₱57,600.00
2.	Dennis T. Dimaano	66,520.00
3.	Evelyn T. Estacio	88,520.00
4.	Soledad B. Atte	69,520.00
5.	Luz T. Minkay	69,520.00

SO ORDERED.[12] (Underscoring supplied)

Conformably with the Court's ruling in *People v. Mateo*,[13] which amended Sections 3 and 10 of Rule 122, Section 13 of Rule 124 and Section 3 of Rule 125 of the 2000 Rules on Criminal Procedure insofar as they provide for direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, this case was referred to the CA for intermediate review.

On February 24, 2006, the CA Special First Division, speaking through Associate Justice Rebecca de Guia-Salvador, affirmed with modification the RTC disposition, thus:

WHEREFORE, with MODIFICATION to the effect that in Criminal Case Nos. 02-208373, 208375, & 02-208376 (*estafa* for ₱66,520.00, ₱69,520.00 and ₱69,520.00, respectively), appellant is sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional* maximum, as minimum, to ten (10) years and one (1) day of *prision mayor* maximum, as maximum; and in Criminal Case No. 02-208374 (*estafa* for ₱88,520.00), she is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to twelve (12) years and one (1) day of *reclusion temporal* minimum, as maximum, the appealed decision is AFFIRMED in all other respects.

SO ORDERED.[14] (Underscoring supplied)

By a Resolution dated September 6, 2006, the Court required the parties to submit their respective supplemental briefs, if they so desired. On November 14, 2006, the Office of the Solicitor General manifested that it would no longer file a supplemental

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[12] *Id.* at 33-34.

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

[14] CA *rollo*, p. 135. (Words and figures in parentheses.)

brief for plaintiff-appellee, the People.[15] Appellant similarly manifested a desire to adopt her main brief on record.[16]

Issue

Through the PAO, appellant submits the lone assignment that "the trial court gravely erred in finding her guilty of illegal recruitment and five (5) counts of *estafa* despite the insufficiency of evidence for the prosecution."[17]

My Opinion

The appeal cannot succeed.

In essence, appellant anchors her plea for acquittal on denial. She insists she is a mere employee and not a responsible officer of ATTC. Her duties are confined to routinary clerical work. She was not aware that the agency, through her co-accused, was undertaking illegal recruitment activities. Further, she did not gain from the defraudation of private complainants.

On Illegal Recruitment

Illegal recruitment, as defined under R.A. No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995,[18] pertains to "any recruitment activities, including the prohibited practices enumerated under Article 34 of the Labor Code, to be undertaken by non-licensees or non-holders of authority."[19] The term "recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, including referrals, contract services,

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[15] *Rollo*, p. 20.

[16] *Id.* at 24.

[17] CA *rollo*, p. 49.

[18] Republic Act No. 8042, entitled "An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and for Other Purposes".

[19] *Id.*, Sec. 6.

promising or advertising for employment, locally or abroad, whether for profit or not, provided that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.[20]

The law imposes a higher penalty when the illegal recruitment is committed by a syndicate or in large scale as it is considered an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme. It is deemed committed in large scale if committed against three or more persons individually or as a group.[21]

The essential elements of the crime of illegal recruitment in large scale are as follows:

(1) the accused engages in the recruitment and placement of workers, as defined under Article 13(b) or in any prohibited activities under Article 34 of the Labor Code;

(2) the accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, whether locally or overseas; and

(3) the accused commits the same against three (3) or more persons, individually or as a group.[22]

In the case at bench, the People was able to prove beyond reasonable doubt the confluence of these triple elements. The evidence on record amply shows that appellant, together with her co-accused Robles, Miranda, Catacotan, and Resco, engaged

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[20] Presidential Decree No. 442, Art. 13, otherwise known as the Labor Code of the Philippines, as amended.

[21] Republic Act No. 8042, Sec. 7.

[22] *People v. Gallardo*, G.R. Nos. 140067-71, August 29, 2002, 388 SCRA 121, 129; *People v. Reichl*, 428 Phil. 643, 657 (2002); *People v. Ortiz-Miyake*, *supra* note 1, at 193.

in activities that fall within the definition of recruitment and placement under the Labor Code and R.A. No. 8042.

The records bear out that appellant and her co-accused promised overseas employment to private complainants Evelyn Estacio, Soledad Atte, Luz Minkay, Dennis Dimaano, and Rogelio Legaspi. They required private complainants to prepare and submit the necessary documents for their purported deployment abroad. They demanded and accepted amounts ranging from ₱57,000.00 to ₱88,520.00 as placement and processing fees from private complainants. However, not one of private complainants was able to depart for abroad.

Philippine Overseas Employment Administration Senior Labor and Employment Officer Ann Abastra Abas testified that based on their records, Beth Temporada or Baby Robles of ATTC was neither authorized nor licensed to recruit workers for overseas employment.

Appellant's posturing that she is not criminally liable for being a mere employee of ATTC deserves scant consideration. The witnesses for the People were categorical in narrating that appellant was actively involved in their recruitment. Private complainant Evelyn Estacio testified that appellant assured her that although her scheduled deployment to Sri Lanka was delayed, her employment documents had been transmitted ahead of her. Estacio likewise disclosed that appellant received money, purportedly intended for ATTC, from her. Dennis Dimaano testified that it was appellant who informed him that his flight schedule was only delayed. It was appellant who rescheduled his departure date to no avail. Private complainants Atte, Minkay, and Legaspi, upon the other hand, consistently disclosed that appellant repeatedly assured them that ATTC had the capacity to send them to various employments abroad.

Time and again, this Court has ruled that the calibration of the testimonies of the witnesses is a matter best left to the discretion of the trial court. For the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted

assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[23]

Furthermore, appellant failed to show that private complainants were actuated by any ill motive for them to testify falsely against her. Certainly, it would be against human nature and experience for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings. Private complainants had no motivation other than to tell the truth.[24]

Clearly, the totality of the evidence shows that appellant was engaged in the recruitment and placement of workers for overseas employment under Article 13 (b) of the Labor Code.[25] She can not now be heard to feign ignorance of her actions. Undoubtedly, the acts of appellant showed unity of purpose with those of her co-accused Robles, Catacotan, Miranda, and Resco. All these acts established a common criminal design mutually deliberated upon and accomplished through coordinated moves. There being conspiracy, appellant shall be equally liable for the acts of her co-accused even if she herself did not personally reap the fruits of their execution.[26]

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[23] See *People v. Rayles*, G.R. No. 169874, July 27, 2007, 528 SCRA 409; *People v. Quijada*, G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191, 212-213; *People v. Lua*, G.R. Nos. 114224-25, April 26, 1996, 256 SCRA 539, 546.

[24] *People v. Ong* Co, G.R. No. 112046, July 11, 1995, 245 SCRA 733, citing *People v. Simon*, G.R. No. 56925, May 21, 1992, 209 SCRA 148; *People v. Villagracia*, G.R. No. 94471, March 1, 1993, 219 SCRA 212.

[25] *People v. Bautista*, G.R. No. 113547, February 9, 1995, 241 SCRA 216; *People v. Benemerito*, G.R. No. 120389, November 21, 1996, 264 SCRA 677, 691-692.

[26] *People v. Gallardo*, *supra* note 22; *People v. Reichl*, *supra* note 22.

Section 7 (b), R.A. No. 8042,[27] amending Article 39 (a) of P.D. No. 1412, penalizes illegal recruitment in large scale in the following tenor:

> Sec. 7. *Penalties.* —
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> x x x x x x x x x
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> (b) The penalty of life imprisonment and a fine of not less than Five Hundred Thousand pesos (₱500,000.00) nor more than One Million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Article 38 (b) of the Decree declares that illegal recruitment committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Appellant and her co-accused having recruited five persons, giving them the impression of the ability to send workers abroad, assuring them of their employment in Singapore, Hongkong, and Sri Lanka, and collecting various amounts for processing and placement fees, without license or authority to so recruit, undoubtedly committed large-scale illegal recruitment.[28] Perforce, the RTC and the CA correctly imposed upon appellant the penalty of life imprisonment and a fine of ₱500,000.00.

On *Estafa*

The conviction of appellant on five counts of *estafa* should likewise be affirmed. The rule is well-entrenched in this jurisdiction that a person may be charged with and convicted separately of illegal recruitment under the Labor Code; and *estafa* under the Revised Penal Code (RPC), Article 315, paragraph 2 (a). The Court, through the *ponencia* of Mr. Justice Leonardo Quisumbing in *People v. Yabut*,[29] aptly observed:

> In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted *separately* of illegal

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[27] Approved June 7, 1995.

[28] *People v. Benemerito, supra* note 25, at 692.

[29] G.R. Nos. 115719-26, October 5, 1999, 316 SCRA 237.

recruitment under the Labor Code and *estafa* under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while *estafa* is malum in se where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for *estafa* under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of *estafa* will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and *vice versa*.[30]

The prosecution has proven beyond reasonable doubt that appellant is guilty of *estafa* under the RPC, Article 315, paragraph (2) (a), which provides that *estafa* is committed "by using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits."

The records unveil that appellant and her co-accused conspired and confederated with one another in deceiving private complainants into believing that they had the authority and capability to send them abroad for employment; that there were available posts for them in Singapore, Hong Kong, and Sri Lanka for which they would be hired; and that by reason and on the strength of such assurances, private complainants parted with their hard-earned money in payment of the various processing and placement fees.

As all these representations of appellant and her cohorts proved false and empty, her conviction for five counts of *estafa* under paragraph 2 (a) of Article 315 of the RPC in Criminal Case Nos. 02-208372 to 02-208376 should be upheld.

Now to the imposable penalty in *estafa*.

In meting out the penalties for the five counts of *estafa*, the RTC pegged the minimum terms at four years and two months of "*prision correctional*" *(sic)*, although the maximum terms

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[30] *People v. Yabut*, *id.* at 246-247.

reached nine years and one day up to eleven years and one day of *prision mayor*.

Thus, the RTC imposed upon appellant in Criminal Case No. 02-208372 the indeterminate penalty of "four (4) years and two (2) months of *prision correctional (sic)* as minimum, to nine (9) years and one (1) day of *prision mayor*, as maximum" for the *estafa* in the amount of ₱57,000.00 committed against complainant Rogelio A. Legaspi, Jr.; in Criminal Case Nos. 02-208373, 02-208375, and 02-208376, the indeterminate penalty of "four (4) years and two (2) months of *prision correctional (sic)* as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum" for the *estafa* in the amounts of ₱66,520.00, ₱69,520.00 and ₱69,520.00, respectively, committed against complainants Dennis Dimaano, Soledad Atte and Luz T. Minkay; and in Criminal Case No. 02-208374, the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum, to eleven (11) years and one (1) day of *prision mayor*, as maximum for the *estafa* in the amount of ₱88,520.00 committed against Evelyn Estacio.

On the other hand, the CA affirmed the RTC sentence in Criminal Case No. 02-208372 but modified the penalty in four of the five convictions for *estafa*. The CA ratiocinated:

> The penalty for *estafa* depends on the amount defrauded. Article 315 of the Revised Penal Code prescribes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00 pesos. If such amount exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one (1) year for each additional ₱10,000.00, but the total penalty which may be imposed shall not exceed twenty years.
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> As the respective amounts defrauded in the *estafa* cases exceed ₱22,000.00, the penalty should be imposed in its maximum period, or *prision mayor* minimum which ranges from six (6) years, eight (8) months and twenty-one (21) days to eight (8) years, plus one (1) year for each additional ₱10,000.00 in excess of ₱22,000.00. Applying the Indeterminate Sentence Law, the maximum term should be taken from the aforesaid period, while the minimum term shall

be within the range of the penalty next lower in degree to that prescribed by the Code for the offense, in any of its periods.

Accordingly, in Criminal Case No. 02-208372, since the amount defrauded was P57,600.00, the trial court correctly imposed on appellant the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional* maximum, as minimum, to nine (9) years and one (1) day of *prision mayor* medium, as maximum.

With respect to Criminal Case Nos. 02-208373, 02-208374, 02-208375 & 02-208376, the indeterminate penalty imposed on appellant needs correction. In said cases, the amounts defrauded were P66,520.00, P69,520.00 and P69,520.00, respectively. Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence should be anywhere within the range of *prision correccional* maximum, while the maximum penalty should be ten (10) years and one day of *prision mayor* maximum.

In Criminal Case No. 02-208374, the amount defrauded was P88,520.00. Applying the Indeterminate Sentence Law, appellant should be meted the indeterminate penalty of eight (8) years of *prision mayor* medium, as minimum, to twelve (12) years and one (1) day of *reclusion temporal* minimum, as maximum.[31] (Underscoring supplied)

A review of case law on the calibration of what is labeled as incremental penalty in *estafa vis-a-vis* the Indeterminate Sentence Law (ISL) yields two schools of thought. They are reflected in the RTC and CA sentences.

First School of Thought

In *People v. Pabalan*,[32] decided on September 30, 1996, the Court declared for the first time that the maximum penalty in *estafa* shall be taken from the maximum period of the bas*ic* penalty as stated in Article 315 of the RPC, as augmented by the additional years of imprisonment (one year for each additional ₱10,000.00 in excess of ₱22,000.00), while the minimum term

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[31] CA *rollo*, pp. 133-135.

[32] G.R. Nos. 115350 & 117819-21, September 30, 1996, 262 SCRA 574.

of the indeterminate sentence shall be within the range of the penalty next lower in degree to that provided by law without considering the incremental penalty for the amounts in excess of ₱22,000.00. That penalty immediately lower in degree is *prision correccional* in its minimum and maximum periods, with a duration of six months and one day to four years and two months.

The Court said in Pabalan:

> On the imposable penalty for the particular felony of *estafa* in the present cases, we are constrained to discuss the pertinent provision of Article 315 of the Revised Penal Code. Under the said article, an accused found guilty of *estafa* shall suffer:
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> > 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos, but the total penalty which may be imposed shall not exceed twenty years. In such case and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The amount of the fraud in Criminal Case No. 3090-V-93 is ₱88,500.00; in Criminal Case No. 3091-V-93, ₱66,000.00; and in Criminal Case No. 3092-V-93, ₱94,400.00. Subtracting ₱22,000 from each of the aforesaid amounts will leave ₱66,500.00, ₱44,000.00 and ₱72,400.00 in the respective criminal cases. To determine the additional years of imprisonment prescribed in the above article, each of the latter amounts shall be divided by ₱10,000.00, disregarding any amount below ₱10,000.00. Thus, in the foregoing *estafa* cases, the incremental penalties of six (6) years, four (4) years and seven (7) years should be correspondingly added to the maximum period of the bas*ic* penalty provided in the aforequoted paragraph or Article 315.

Applying the mandate of the Indeterminate Sentence Law, the maximum penalty shall therefore be taken from the maximum period of said bas*ic* penalty in Article 315 as augmented by the additional

years of imprisonment, while the minimum term of the indeterminate sentence shall be within the range of the penalty next lower in degree to that provided by law without considering the incremental penalty for the amounts in excess of ₱22,000.00. That penalty immediately lower in degree is *prision correccional* in its minimum and medium periods, with a duration of six (6) months and one (1) day to four (4) years and two (2) months.

Based on the foregoing considerations, the lower court incorrectly imposed the penalty of *reclusion perpetua* in the illegal recruitment case, and likewise erred in fixing the minimum terms of the indeterminate sentences in the *estafa* cases.[33] (Underscoring supplied)

In *People v. Benemerito*,[34] a slightly different formulation for the calibration of the penalty in *estafa* was prescribed. Said the Court:

The amount proved to have been defrauded in Criminal Case No. Q-93-51513 and Criminal Case No. Q-93-51514 was P50,000.00 in each case. Hence, the penalty prescribed above should be imposed in its maximum period. The maximum period thereof following the rule prescribed in the last paragraph of Article 77 of the Revised Penal Code ranges from six (6) years, eight (8) months and twenty-one (21) days to eight (8) years. We add to it two years and nine (9) months for the amount beyond the first ₱22,000.00 (at the rate of one year for every ₱10,000.00 and nine months for the remaining ₱8,000.00 by ratio and proportion). Applying the Indeterminate Sentence Law, the accused-appellant can be sentenced to an indeterminate penalty whose minimum shall be within the range of the penalty next lower in degree than that prescribed by law, *viz.*,

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[33] *People v. Pabalan*, *id.* at 590-592. *Reclusion perpetua* for large-scale illegal recruitment is incorrect because the special law provides for life imprisonment. Life imprisonment and *reclusion perpetua* are two different penalties. The Code does not prescribe life imprisonment for any of the felonies defined in it. That penalty is invariably imposed for serious offenses penalized by special laws. *Reclusion perpetua* entails imprisonment of forty (40) years and carries with it accessory penalties like perpetual special disqualification. Life imprisonment, for one thing, does not carry with it any accessory penalty, and for another, does not have any definite extent or duration.

[34] *Supra* note 25.

prision correccional in its minimum and medium periods (6 months and 1 day to 4 years and 2 months) and whose maximum shall be the abovementioned imposable penalty. The indeterminate penalty can range therefore from 2 years, 11 months and 10 days of *prision correccional*, as minimum to 10 years and 9 months of *prision mayor*, as maximum.

In Criminal Case No. Q-93-51515, the amount proved to have been defrauded is only ₱85,000.00 as the receipt for the ₱10,000.00 is in the name of Shally Flor Gumarang, not the complainant Carlito Gumarang. The principal penalty imposable is likewise the maximum of the prescribed penalty provided for in Article 315 as stated in the immediately preceding paragraph, plus 6 years and 3 months for the amounts beyond ₱22,000.00 (at the rate of 1 year for every additional ₱10,000.00 and 3 months for the remaining ₱3,000.00). Applying the Indeterminate Sentence Law, and the foregoing disquisition, the accused-appellant can be sentenced to an indeterminate penalty ranging from 4 years and 2 months of *prision correccional*, as minimum, to 14 years and 3 months of reclusion temporal, as maximum.[35] (Underscoring Supplied)

It should be noted, however, that the said formula in *Benemerito* is similar to that in *Pabalan* in the sense that the minimum term of the indeterminate sentence **remains stationary** at *prision correccional* while the maximum term can reach up to *reclusion temporal*. But no sufficient rational explanation is given in both cases why the more established rules on penalties have to be disregarded in the process of fixing the minimum term.

People v. Gabres[36] was the first to refer to the incremental penalty in *estafa* as a modifying circumstance. Pertinent parts of the said ruling read:

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be 'that which, in view of the attending circumstances, could be properly imposed' under the Revised Penal Code, and the minimum shall be 'within the range of the penalty next lower to that prescribed' for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense,

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[35] *People v. Benemerito*, *id.* at 693-694.

[36] G.R. Nos. 118950-54, February 6, 1997, 267 SCRA 581.

without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

The fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the *estafa* charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00.

Accordingly, the Court thus finds some need to modify in part of the penalties imposed by the trial court, *viz*.:

In Criminal Case No. 93-CR-1800, the amount involved is ₱45,000.00. Hence, the minimum penalty should be reduced to four (4) years and two (2) months of *prision correccional*, which is the maximum of the allowable minimum penalty of the indeterminate sentence. The maximum penalty imposed by the court *a quo* is within lawful range.

In Criminal Case No. 93-CR-1801, the amount involved, as so modified by this Court, is ₱50,000.00. The minimum penalty should then be reduced to four (4) years and two (2) months of *prision correccional* (the maximum of the minimum of the indeterminate sentence). The maximum penalty should at least be six (6) years and one (1) day of *prision mayor* plus a period of two (2) years (one [1] year for each additional P10,000.00) for a total maximum period of eight (8) years and one (1) day of *prision mayor*.

In Criminal Case No. 93-CR-1802 and No. 93-CR-1803, the amounts involved in each total ₱40,000.00. The minimum penalty of the indeterminate sentence imposed by the court *a quo* of two (2) years, eight (8) months and one (1) day of *prision correccional* is within lawful range. The maximum penalty, however, should at least be six (6) years and one (1) day of *prision mayor* plus a period of one (1) year for a total maximum period of seven (7) years and one (1) day of *prision mayor*.[37] (Underscoring supplied)

Gabres, taking a cue from *Pabalan* and *Benemerito*, added to the foundation for the prevailing view that the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the RPC, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense; that the penalty next lower should be based on the penalty prescribed by the Code for the offense, **without first considering any modifying circumstance attendant to the commission of the crime**; that the **modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence**; that in computing the penalty for *estafa*, the fact that the amounts involved exceed ₱22,000.00 **should not be considered in the initial determination of the indeterminate penalty**; that instead the matter should be taken as **analogous to modifying circumstances** in the imposition of the maximum term of the full indeterminate sentence.

In justifying this interpretation of the provisions of the RPC on the penalty in *estafa vis-a-vis* the application of the ISL, the Court theorized that this is in accord with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for *estafa* is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods.[38]

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[37] *People v. Gabres*, *id.* at 595-597.

[38] *Id.* (Underscoring supplied.)

This interpretation was reiterated in, among others, *People v. Hernando*,[39] *People v. Menil*,[40] *People v. Logan*,[41] *People v. Gallardo*[42] and *Garcia v. People*.[43]

To my mind, this interpretation needs revisiting. It should be reconciled with (1) Article 315; (2) Article 14 of the RPC; (3) the ISL; (4) the bas*ic* rules of statutory construction; and (5) the rationalization of penalties. Several reasons support this conclusion.

Second School of Thought

First. *Pabalan*, *Benemerito*, and *Gabres* collectively state that the penalty prescribed by the Code for *estafa* is *prision correccional* maximum to *prision mayor* minimum. That is not true.

The said penalty is only the **initial** prescription, the starting point. In truth, the **penalty for *estafa***, as in theft, **hinges on the value or amount involved**.[44] The penalty is determined by the amount of the actual damage suffered, or the potential one, if the act has not been consummated.[45] It is the value of the damage or the prejudice that is the basis for the determination of penalty.[46] As in theft, the penalty is graduated according to the value.[47]

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[39] G.R. No. 125214, October 28, 1999, 317 SCRA 617.

[40] G.R. Nos. 115054-66, September 12, 2000, 340 SCRA 125.

[41] G.R. Nos. 135030-33, July 20, 2001, 361 SCRA 581.

[42] *Supra* note 22.

[43] G.R. No. 144785, September 11, 2003, 410 SCRA 582.

[44] *U.S. v. Fernandez*, 9 Phil. 199 (1907); *U.S. v. Leaño*, 6 Phil. 368 (1906).

[45] Albert, M., Revised Penal Code, 1946 ed., pp. 726-727.

[46] Reyes, L.B., Revised Penal Code, Bk. II, 15th ed., 2001, p. 733.

[47] *People v. Concepcion*, G.R. No. 131477, April 20, 2001, 357 SCRA 168.

Article 315 of the RPC reads:

> Article 315. Swindling (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Verily, Article 315 prescribes the penalty of *prision correccional* maximum to *prision mayor* minimum if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00. Beyond that, the penalty varies. It may be *prision mayor* or reclusion temporal, if the amount exceeds ₱22,000.00 as to call for many additional years — one (1) year for each additional ₱10,000.00.

In *People v. Dela Cruz*,[48] the Court had occasion to explain the rudiments of composing the penalty for theft, simple and qualified. Said the Court:

> We now discuss the penalty to be imposed. Under Article 310 in relation to Article 309(1) of the Revised Penal Code, qualified theft shall be punished by the penalty next higher by two degrees than those specified in simple theft. Article 309(1) provides that if the value of the thing stolen is more than ₱12,000.00 pesos but does not exceed ₱22,000.00 pesos, the penalty of *prision mayor* in its minimum and medium periods shall be imposed. If the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years.

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[48] G.R. No. 125936, February 23, 2000, 326 SCRA 324. Concurred in by Davide, Jr., *C.J.*, Puno, Kapunan, and Ynares-Santiago, *JJ.*

In this case, the stolen property is a Yamaha RS motorcycle bearing plate no. CZ-2932 with sidecar valued at ₱30,000.00. Since this value remains undisputed, we accept this amount for the purpose of determining the imposable penalty. In simple theft, such amount carries the corresponding penalty of *prision mayor* in its minimum and medium periods to be imposed in the maximum period. Considering that the penalty for qualified theft is two degrees higher than that provided for simple theft, the penalty of *prision mayor* in its minimum and medium periods must be raised by two degrees. Thus, the penalty prescribed for the offense committed of qualified theft of motor vehicle is reclusion temporal in its medium and maximum periods to be imposed in its maximum period.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense, without first considering any modifying circumstance attendant to the commission of the crime. Since the penalty prescribed by law is *reclusion temporal* medium and maximum, the penalty next lower would be *prision mayor* in its maximum period to reclusion temporal in its minimum period. Thus, the minimum of the indeterminate sentence shall be anywhere within ten (10) years and one (1) day to fourteen (14) years and eight (8) months.[49] (Underscoring supplied)

Indeed, the minimum term of the indeterminate sentence is or should be only one degree away from the maximum term. Corollarily, the minimum term varies as the amount of the thing stolen rises and falls. In essence, it goes in the same direction as the maximum term.

May the ruling in *People v. Dela Cruz*[50] be used as basis for the penology in *estafa* when what was involved there was qualified, not simple theft? The answer is in the affirmative.

Dela Cruz discussed the rudiments for composing the penalty for **both** simple and qualified theft. Thus, the pronouncement of the Court on simple theft, which prescribes the same penalty[51]

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[49] *People v. Dela Cruz, id.* at 335-336.

[50] *Id*.

[51] Art. 309. *Penalties*. — Any person guilty of theft shall be punished by:

as that for *estafa* in excess of ₱22,000.00, may be applied here.

It is of no moment that *Dela Cruz* involved the crime of qualified theft. What is material is that the Court echoed the fundamental rule that the penalty for theft, as in *estafa*, hinges on the value or amount involved.[52] It is the value of the damage or prejudice that is the basis for the determination of penalty.[53] In theft as in *estafa*, the penalty is graduated according to the value.[54]

Second. *Pabalan*, *Benemerito*, and *Gabres*, as well as those that came after them, considered the incremental penalty in *estafa* as a mere modifying circumstance. Said cases projected that the incremental penalty of one year for each ₱10,000.00 in excess of ₱22,000.00 is not part of the penalty but is akin to a circumstance aggravating the felony.

To consider the additional amount in excess of ₱22,000.00 as mere modifying circumstance or one analogous to it is baseless. A modifying circumstance is either mitigating or aggravating. The enumeration of the aggravating circumstances under Article 14 of the RPC is exclusive, as opposed to the enumeration in Article 13 of the same Code regarding mitigating circumstances where there is a specific paragraph (paragraph 10) providing

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1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph and one year of each additional ten thousand pesos, but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

[52] *U.S. v. Fernandez*, *supra* note 44; *U.S. v. Leaño*, *supra* note 44.

[53] See note 45.

[54] *People v. Concepcion*, *supra* note 47.

for analogous circumstances.[55] ***Casus omissus pro omisso habendus est.*** A case omitted is intentionally omitted.

The view that the incremental penalty in *estafa* is a mere modifying circumstance or analogous to it runs afoul of Article 14 of the Code that does not so provide. Article 14 is clear and needs no expansion.

There is a view that the "attending circumstances" mentioned in Section 1 of the ISL are not limited to those modifying circumstances falling within the scope of Articles 13 and 14 of the RPC. Quasi-recidivism is cited as an example where the penalty next lower in degree is computed based on the prescribed penalty and not the prescribed penalty in its maximum period.

The citation is inappropriate. It should not be forgotten that quasi-recidivism is a **special aggravating circumstance**.[56] Thus, it is sui genesis: a class of its own.

Third. Section 1 of Act No. 4103, the ISL, as amended by Act No. 4225, declares:

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[55] *People v. Gano*, G.R. No. 134373, February 28, 2001, 353 SCRA 126, 135, citing *People v. Regala*, G.R. No. 130508, April 5, 2000, 329 SCRA 707, 716.

[56] Revised Penal Code, Art. 160. Commission of another crime during service of penalty imposed for another previous offense — *Penalty*. — Besides the provisions of Rule 5 of Article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency.

The elements of quasi-recidivism are:

1) That the offender was already convicted by final judgment of one offense; and

2) That he committed the new felony before beginning to serve such sentence or while serving the same. Luis B. Reyes, Revised Penal Code, Bk. II, 2001 ed., p. 172.

SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the **minimum** of which shall be within the range of the penalty **next lower to that prescribed by the Code for the offense;** and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.[57] (Emphasis supplied)

This section may be subdivided into four parts or sub-rules, to wit:

(1) ISL applies mandatorily if the maximum prison sentence exceeds one year, whether the offense is punished by the RPC (or its amendments) or any other law (special law);

(2) The sentence has a minimum term and a maximum term;

(3) If the crime is punished by the RPC, the maximum term shall be the proper penalty under the Code in view of the attending mitigating/aggravating) circumstances and the minimum term shall be within the range of the penalty next lower than that prescribed by the Code;

(4) If the offense is punished by any other law (special law), the maximum term shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same law.

By jurisprudence, the basis of application of ISL is the penalty actually imposed. Thus, even in capital offenses, if the sentence is not death or life imprisonment/*reclusion perpetua* because of a privileged mitigating circumstance, the ISL applies.[58]

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[57] Act No. 4103, Sec. 1, as amended by Act No. 4225.

[58] *People v. Cempron*, G.R. No. 66324, July 6, 1990, 187 SCRA 248; *People v. Moises*, G.R. No. L-32495, August 13, 1975, 66 SCRA 151.

The minimum term shall be within the range of the penalty next lower than that prescribed by the Code for the offense.[59] In crafting the minimum term, the court cannot impose a minimum penalty that is in the same period and the same degree as the maximum penalty.[60] This is because the ISL expressly mandates that it "shall be within the range of the penalty next lower to that prescribed by the Code for the offense.[61]

In interpreting what is the "penalty next lower", the Court, in *People v. Co-Pao*,[62] held that the penalty next lower in degree consists in the period next following within the same penalty, if any, otherwise within the penalty following in the scale prescribed in Article 70. The Court would later on be more emphatic in *People v. Haloot*,[63] where it ruled that "the **penalty next lower than another should begin where the latter ends** because otherwise, **if it were to skip intermediate ones, it would be lower but not next lower in degree.**"

In *People v. Gonzales*,[64] the Court held for the first time that the minimum of the indeterminate sentence, the penalty next lower, must be based on the penalty prescribed by the Code for the offense, "without considering in the meantime the modifying circumstances." **But this phrase is not found in the language of the ISL. Moreover, in actual application, this method has not been followed in most cases outside *estafa*, as will be shown shortly.**

The clause "without considering in the meantime the modifying circumstances" first espoused in *Gonzales* would become the foundation of the first school of thought in *estafa* penology. As adverted to earlier, *Pabalan*, *Benemerito*, and *Gabres* would later hold that in composing the penalty in *estafa*, the fact that

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[59] *Id*.

[60] Reyes, Revised Penal Code, Bk. I, 2001 ed., p. 770.

[61] *Id*.

[62] 58 Phil. 545 (1933).

[63] 37 O.G. 2901.

[64] 73 Phil. 549 (1941).

the amounts involved exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; that instead, the matter should be taken as analogous to modifying circumstances material only to the imposition of the maximum term of the indeterminate sentence.

This interpretation of the ISL needs a second hard look. It runs counter to the law's express mandate to set the minimum term at the penalty next lower prescribed by the code for the offense.

The first school of thought in *estafa* penology pegs the minimum term at *prision correccional* in its minimum and medium periods (which has a range of six months and one day to four years and two months). Under the prevailing rule, the minimum term remains in that vicinity even if the amount of the fraud exceeds the ₱22,000.00 ceiling set by Article 315 of the Code. Thus, it is not uncommon that a swindler of huge amounts is meted a prison sentence of four years and two months of *prision correccional*, as minimum, to twenty years of *reclusion temporal*, as maximum.

This is a clear defiance of, and disobedience to, the ba*sic* tenet that the minimum term shall be only one degree away from the maximum term. Section 1 of the ISL is clear. The minimum term shall be "within the range of the penalty next lower to that prescribed by the code for the offense." The rule in *Haloot* that "the penalty next lower than another should begin where the latter ends because otherwise, if it were to skip intermediate ones, it would be lower but not next lower in degree" is more in keeping with the letter and spirit of the ISL.

Clearly, an indeterminate penalty with a maximum term of reclusion temporal and a minimum term of *prision correccional* in its minimum or medium periods would not be in keeping with the regular formula of the minimum term being just one degree, not two degrees, lower than the maximum term.

The minimum of the indeterminate sentence should be arrived at by descending one degree down the scale from the penalty actually imposed. In other words, the distance

between the maximum and the minimum should always be only one degree.

In *People v. Ducosin*,[65] the Court had occasion to rule that the minimum of the indeterminate sentence is arrived at by descending one degree lower from the penalty prescribed by law for the felony. The doctrine was reiterated with greater firmness in *People v. Alba*,[66] *Lontoc v. People*,[67] *People v. Yco*,[68] *Basan v. People*,[69] and *Larobis v. Court of Appeals*.[70]

In computing the indeterminate sentence for crimes punished under the RPC, the **regular formula** is to determine first the maximum term, after considering all the attending circumstances. Then, the minimum term is arrived at by going one degree down the scale.

In *Sabang v. People*,[71] where the accused was convicted of homicide, the Court, with Mr. Justice Tinga as *ponente*, categorically ruled: "Under Art. 249 of the Revised Penal Code, homicide is punished by *reclusion temporal*. There being one (1) mitigating circumstance of voluntary surrender, the penalty shall be imposed in its minimum period. Applying the benefits of the ISL, the trial court correctly imposed an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum." Note that here, the penalty actually imposed was *reclusion temporal* in its minimum period. The minimum term is a degree down the scale of penalties, *prision mayor*, imposed in its medium period.

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[65] 59 Phil. 109, 117 (1933).

[66] 63 Phil. 1058-1059 (1936) (unreported).

[67] 74 Phil, 513 (1943).

[68] 95 Phil. 951-952 (1954) (unreported).

[69] G.R. No. L-39483, November 29, 1974, 61 SCRA 275.

[70] G.R. No. 104189, March 30, 1993, 220 SCRA 639.

[71] G.R. No. 168818, March 9, 2007, 518 SCRA 35.

In *Garces v. People*,[72] a prosecution for rape, Mme. Justice Consuelo Ynares-Santiago, speaking for the Court, sentenced accused Pacursa, after considering the mitigating circumstance of **minority** at the time of the commission of the crime, "to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to 15 years of *reclusion temporal*, as maximum." On the other hand, accused Garces was found guilty as an **accomplice** to the crime of rape, and was sentenced to "suffer an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to 15 years of *reclusion temporal*, as maximum."

A similar mode of determining the maximum and minimum terms was followed in the following *ponencia*s: *People v. Miranda*,[73] *People v. Candaza*,[74] *People v. Concepcion*,[75] *People v. Senieres*,[76]

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[72] G.R. No. 173858, July 17, 2007, 527 SCRA 827.

[73] G.R. No. 169078, March 10, 2006, 484 SCRA 555. Penned by Mme. Justice Ynares-Santiago. "Appellant is found GUILTY of attempted rape and sentenced to an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, ..."

[74] G.R. No. 170474, June 16, 2006, 491 SCRA 280. Penned by Mme. Justice Ynares-Santiago. "The decision of the Court of Appeals affirming the decision of Branch 172, Regional Trial Court, Valenzuela City, in Crim. Case No. 677-V-00, finding appellant guilty of acts of lasciviousness, is AFFIRMED with MODIFICATION, in that appellant is sentenced to suffer imprisonment from eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years, four (4) months and (1) day of *reclusion temporal* as maximum, ..."

[75] G.R. No. 169060, February 6, 2007, 514 SCRA 660. Penned by Mr. Justice Tinga. Accused was found guilty of homicide and sentenced to suffer "indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, ..."

[76] G.R. No. 172226, March 23, 2007, 519 SCRA 13. Penned by Mr. Justice Tinga. Accused was found guilty of rape and "is sentenced to suffer imprisonment ranging from four (4) years two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, ..."

People v. Hermocilla,[77] and *People v. Abulon*.[78]

However, to the point of being repetitive, the current penology in *estafa* is differently formulated. In *estafa*, the minimum term is not arrived at by descending one degree lower than the maximum term of the indeterminate sentence. The minimum term is fixed at *prision correccional* minimum and medium periods (six months and one day to four years and two months), regardless of the amount of the fraud. It often happens that a maximum term of the indeterminate sentence is set at twenty years of *reclusion temporal*, while the minimum term is pegged at four years and two months.

I see no cogent justification why the penology in *estafa* should be divergent from the established formula regularly applied in other crimes penalized under the RPC. Put differently, there is neither rhyme nor reason why the penalty on *estafa* should be fixed at four years, two months of *prision correccional*. A uniform standard for the computation of penalties regardless of the crime, would avoid confusion among the Bench and Bar.

My stance is not without precedents. In the 1999 case of *People v. Romero*,[79] involving *estafa* of ₱150,000.00, the Court sentenced the accused to an indeterminate sentence of ten years and one day of *prision mayor*, as minimum, to sixteen years and one day of *reclusion temporal*, as maximum. That same year, in *De Carlos v. Court of Appeals*,[80] on *estafa* of

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[77] G.R. No. 175830, July 10, 2007, 527 SCRA 296. Penned by Mme. Justice Ynares-Santiago. Accused was found guilty of rape through sexual assault and sentenced to suffer the "indeterminate penalty of 12 years of *prision mayor*, as minimum, up to 20 years of *reclusion temporal*, as maximum, ..."

[78] G.R. No. 174473, August 17, 2007, 530 SCRA 675. Penned by Mr. Justice Tinga. Accused was found guilty of acts of lasciviousness and sentenced to suffer the "indeterminate penalty of imprisonment for six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum, ..."

[79] G.R. No. 112985, April 21, 1999, 306 SCRA 90. Penned by Justice Bernardo Pardo.

[80] G.R. No. 103065, August 16, 1999, 312 SCRA 397.

₱895,190.59, the Court upheld both the trial court and CA in the imposition of an indeterminate sentence of eight years and one day of *prision mayor*, as minimum, to twenty years of *reclusion temporal*, as maximum.

In *People v. Dinglasan*,[81] the Court, speaking through Mr. Justice Quisumbing, found the accused guilty beyond reasonable doubt of one count of *estafa* and sentenced him to "suffer an indeterminate penalty of 6 years and 1 day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum; and to pay the offended party, Charles Q. Sia, the amount of ₱26,400.00, the face value of the check, as actual damages."[82] The *ponencia* was concurred in by Justices Josue Bellosillo, Vicente Mendoza, Romeo Callejo, Sr. and Ma. Alicia Austria-Martinez.

In *Salazar v. People*,[83] where the Court, per then Mr. Justice (now Chief Justice) Reynato Puno, affirmed the sentence imposed by the court *a quo* and the CA on the accused which was an "indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prision mayor* as the minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as the maximum"[84] for *estafa* under Article 315 (b) of the RPC, in the amount of $595,259.00. Then Chief Justice Artemio Panganiban and Justices Angelina Sandoval-Gutierrez, Renato Corona, and Conchita Carpio-Morales concurred.

Note that in these cases, the minimum terms imposed on the accused were not pegged at *prision correccional* minimum and medium periods. The minimum terms were adjusted as the amount of fraud increased. Also, the maximum sentence imposed in both instances was only one degree away from the minimum sentence. This manner of sentencing is what exactly this opinion seeks to follow.

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[81] G.R. No. 133645, September 17, 2002, 389 SCRA 71.

[82] *People v. Dinglasan*, *id.* at 81. (Underscoring supplied.)

[83] G.R. No. 149472, October 15, 2002, 391 SCRA 162.

[84] *Salazar v. People*, *id.* at 168. (Underscoring supplied.)

Further, to perpetually set the minimum of *estafa* at *prision correccional* minimum or medium periods, is **absurd. It would be giving the same minimum penalty to one who commits *estafa* of ₱13,000.00 and another who swindles ₱130 million or more.** That runs counter to the sound, rational principle that the penalty must be commensurate with the gravity, or lightness, of the crime committed. **No wonder, swindling incidents of huge proportions or scams remain rampant, unabated and unchecked. One big reason could be that the present mode of computing the penalty does not pose any deterrence.**

Two objections may be raised. First, the burden is greater on one who defrauds in larger amount because while it is possible that the minimum term imposed by a court would be the same, the maximum term would be longer for the convict who committed *estafa* involving ₱130 million (which would be twenty years of *reclusion temporal*) than the convict who swindled ₱13,000.00 (which could be anywhere from *prision correccional* maximum to *prision mayor* minimum or from four years, two months and one day to eight years). Second, assuming that both convicts qualify for parole after serving the minimum term, the convict sentenced to a higher maximum term would carry a greater "burden" with respect to the length of parole surveillance which he may be placed under, and the penalty for a violation of the terms of the parole, as provided in Sections 6 and 8 of the ISL.

On the first, the penalty is considered "indeterminate" because after the convict serves the minimum term, he or she may become eligible for parole under the provisions of the ISL.[85] Thus, it may happen — and this is not farfetched — that a convict who swindled millions may represent himself as reformed inside prison for the duration of the minimum term just so he can avail of parole.

Too, the imposition of the proper penalty or penalties is determined by the nature, gravity, and number of the offenses charged and proved.[86] Thus, the penalty to be imposed upon a

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[85] *People v. Ducosin*, *supra* note 65.

[86] *People v. Peralta*, G.R. No. L-19069, October 29, 1968, 25 SCRA 759.

person accused must be commensurate with the seriousness or depravity of the felony, offense, or malfeasance being punished. A grave injustice will result if the penalty imposed is disproportionate to the wrong committed.[87]

On the second objection, there is never a guarantee that a convict who has swindled several millions will not again swindle while on parole. Worse, in case he does, there is also no guarantee that he will be brought to justice. Why then should he not serve at least a higher minimum sentence than one who has swindled only several thousands? At least, the swindler of millions should have enough time to reform and reflect on the harm he has caused.

Fourth. To extend the benefits of the ISL twice to swindlers is to violate the intent of the framers of the law.

Given the purpose of the ISL, the law implores the courts to sentence the accused to an indeterminate sentence consisting of a minimum term and a maximum term, instead of a single fixed penalty prescribed by the RPC or by a special law.

The minimum term is material to the entitlement of the accused to the benefits of parole. Once an accused has served the minimum term, his fitness to rejoin society is assessed and determined. If warranted, the accused is ordered released, subject to the conditions of the parole.

However, the *estafa* penology espoused by the first school of thought affords to the accused the benefits of the ISL, not once but twice.

First, the accused is meted an indeterminate sentence. There can be no quarrel there because that is what the law mandates. Second, *Pabalan*, *Benemerito*, and *Gabres* and those succeeding them stagnate the minimum term to *prision correccional* minimum to medium, which has a range of six months and one day to four years and two months, regardless of the amount of the

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[87] *Hong Kong and Shanghai Banking Corporation v. National Labor Relations Commission*, G.R. No. 116542, July 30, 1996, 260 SCRA 49.

fraud. Thus, a swindler of millions is given the same minimum term as one who has committed *estafa* of less than ₱22,000.00. This is where my stand comes in.

The lofty objective of the ISL is already achieved by setting the minimum and maximum terms of an indeterminate sentence. Certainly, without an indeterminate sentence, an accused will be made to suffer a **straight penalty** as prescribed by the Code or by the statute for the offense.

Pegging the minimum term in *estafa* at four years and two months of *prision correccional*, regardless of the amount of the fraud, is to extend the benefits of the ISL to the accused a second time. Surely, the framers of the ISL did not envision the said law to extend excessive favorable treatment to scammers and swindlers.

The bas*ic* purpose of the ISL as stated in *People v. Ducosin* [88] is "to uplift and redeem human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness."[89] Is my opinion in keeping with said purpose? Yes.

The bas*ic* ISL tenet that favors the accused will still be observed even if the minimum of the indeterminate sentence is not constantly pegged at four years, two months of *prision correccional*. My position does not intend to dispense with the upliftment and redemption of valuable human material. What it hopes to accomplish, however, is to keep the minimum of the indeterminate sentence only one degree away from the maximum term prescribed by the Code for *estafa*, after considering the incremental penalty.

More importantly, there is no basis in construing the clause "without considering in the meantime the modifying circumstances" in *Gonzales* in the manner of *Pabalan, Benemerito,* and *Gabres*. The clause should only be interpreted to mean that the court is given the widest latitude in the determination of the minimum term of the indeterminate sentence.

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[88] *Supra* note 65.

[89] *People v. Ducosin, id.* at 117.

In *Ducosin*,[90] the Court held, per Mr. Justice Butte, that the ISL, in the determination of the minimum penalty, "confers upon the courts the widest discretion that the courts have ever had."[91] To fix at four years and two months of *prision correccional* the minimum penalty for *estafa* in excess of ₱22,000.00 is tantamount to straight-jacketing the courts. That is contrary to the "widest discretion" of the courts.

What is more, there is no need to subject Article 315 to a liberal interpretation because its language is clear and unequivocal. Courts are not at all times duty-bound to construe and interpret the laws. Elementary is the rule in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[92]

Interpretation is only resorted to when there is ambiguity. But there is no ambiguity in Article 315 of the RPC. Hence, there is no need to interpret the said provision. The duty of the Court is to apply the law. When the law is clear and unequivocal, the Court has no other recourse but to apply the law and not interpret it (*verba legis*).

Fifth. The present mode of computing penalty for *estafa* detracts from our very concept of the interplay between crime and punishment.

Punitur quia peccatur. Crime as crime must be punished. Justice Mariano Albert, in his commentary on the RPC, stated that a penalty is a punishment inflicted for its violation.[93] It signifies the specific social reaction, the means of defense and

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[90] *Supra* note 65.

[91] *People v. Ducosin*, *id.* at 116.

[92] *Baranda v. Gustillo*, G.R. No. L-81163, September 26, 1988, 165 SCRA 757; *Insular Bank of Asia and America Employees' Union [IBAAEU] v. Inciong*, G.R. No. L-52415, October 23, 1984, 132 SCRA 663; *Aparri v. Court of Appeals*, G.R. No. L-30057, January 31, 1984, 127 SCRA 231.

[93] See note 45, at 157, citing *People v. Necrow*, 13 NE 533.

resistance by which society, yielding to a natural impulse, seeks to repress the offense, harm, and danger caused by the crime.[94]

In imposing penalty on the accused, a three-fold purpose is hoped to be achieved: (1) the expiation of the crime committed; (2) the correction of the culprit; and (3) the defense of society. In fixing the penalty for the commission of a felony, the RPC takes into account the degree of execution of the crime and the participation of the responsible parties. The goal principally is to establish in the most just manner the proportion of the penalty commensurate with the seriousness of the offense.[95]

A lesser punishment than what the law prescribes for an offense is anathema to sound penology. **Penalties for crimes should always be commensurate with the gravity or lightness of the offense committed and proved.** *Estafa* of astronomical amounts, meriting a penalty of *reclusion temporal*, as maximum term, does not deserve a minimum term in the range of *prision correccional* (six months and one day to six years). Rather, the minimum term should be hiked to *prision mayor*, in any of its periods (six years and one day to twelve years). Inversely, cases of *estafa* involving less than ₱22,000.00 are worthy of a minimum term in the range of *prision correccional*.

The present mode of computing the penalty for *estafa* lends too much leniency to swindlers. Those who commit swindling in huge amounts do not deserve any liberality or leniency at all. It is the public — in this case, desperate seekers of employment abroad — who deserve full vindication and protection from the courts.

Estafa of scandalous proportions smacks of serious crimes. Thus, offenders need to be prosecuted and penalized to the full extent of the law. More than any other branch of the government, the Court should see to it that this is accomplished. After all, what the Constitution prohibits is the imposition of excessive fines and the imposition of cruel, degrading, and inhuman

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[94] *Id*.

[95] See note 45, at 157.

punishment,[96] **not** the meting out of a penalty whose duration depends on the gravity of the offense.

A Call for Change

Sound penology dictates that the penalty be commensurate with the lightness or seriousness of the offense being punished. This Court has, in a number of instances, opted to redeem the suffering of the accused after considering the lightness of the offense charged and proved. Thus, in *Vaca v. Court of Appeals*,[97] the Court deleted the prison sentence imposed on petitioners and, instead, imposed only a fine double the amount of the check issued. The Court took into consideration that appellants were qualified for probation but chose to appeal, believing in the worthiness of their cause.

In *Lim v. People*,[98] this Court affirmed the conviction of petitioner for two counts of violation of Batas Pambansa Blg. 22. However, the Court set aside the penalty of imprisonment and sentenced her to pay a fine of ₱200,000.00 in each case with subsidiary imprisonment, only in case of insolvency or non payment, not to exceed six months.

The rule on libel has followed the same route. Just recently, the Court issued Administrative Circular No. 08-2008[99] which expresses a preference for imposing a fine over imprisonment for those convicted of libel.

But this power of the Court to lighten the penalty of lesser crimes carries with it the responsibility to impose a greater penalty for grave felonies. The Court ought not to shirk from its duty to see to it that the guilty are given what they deserve. The Court should do that here.

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[96] United States Constitution, Eighth Amendment; CONSTITUTION (1987), Art. III, Sec. 19 (1).

[97] G.R. No. 131714, November 16, 1998, 298 SCRA 656.

[98] G.R. No. 130038, September 18, 2000, 340 SCRA 497.

[99] Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases.

I am not unaware of the time-honored principle of *stare decisis, et non quieta movere*: follow past precedents and do not disturb what has been settled. Be that as it may, idolatrous reverence for precedent, simply as precedent, no longer rules.[100]

Thus, when circumstances necessitate a review or adjustment, this Court should not hesitate to do so. The legal problems with which society is beset continually cannot be merely considered in the abstract, but must be viewed in the facets of human experience.[101] So must it be the case here.

Finally, the Court should rather be right than be consistent. ***Ang Hukuman ay dapat maging tama sa halip na sa paghatol ay walang pagbabago.*** The only constant in this world is change. ***Ang tanging di-nagbabago sa mundong ito ay pagbabago.***

WHEREFORE, I vote that the appealed Decision of the Court of Appeals be *AFFIRMED WITH MODIFICATION* in that:

1. In Criminal Case No. 02-208372 (~~P~~57,600.00), appellant should be sentenced to an indeterminate penalty of 4 years, 2 months of *prision correccional* medium period, as minimum term, to 9 years, 8 months and 21 days of *prision mayor* medium period, as maximum term;

2. In Criminal Cases Nos. 02-208373 (~~P~~66,520.00), 02-208375 and 02-208376 (both for P69,520.00) appellant should be sentenced to an indeterminate penalty of 4 years, 2 months and 1 day of *prision correccional* maximum period, as minimum term, to 10 years, 8 months and 21 days of *prision mayor* maximum period, as maximum term; and

3. In Criminal Case No. 02-208374 (~~P~~88,520.00), appellant should be sentenced to an indeterminate penalty of 6 years, 1 day of *prision mayor* minimum period, as minimum term, to 12 years, 8 months and 21 days of *reclusion temporal* minimum period, as maximum term.

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[100] *Philippine Trust Co. and Smith, Bell and Co. v. Mitchell*, 59 Phil. 30 (1933).

[101] *Osmeña v. Commission on Elections*, G.R. No. 132231, March 31, 1998, 288 SCRA 447.

EN BANC

[G.R. No. 177742. December 17, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO A. LOPIT,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; PLEA OF GUILTY TO CAPITAL OFFENSE; RULE.— Explicitly, when the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of his culpability. The accused may also present evidence on his behalf. Under the foregoing Rule, three things are enjoined upon the trial court when a plea of guilty to a capital offense is entered: (1) the court must conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) the court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) the court must ask the accused if he desires to present evidence on his behalf and allow him to do so if he desires.

2. ID.; ID.; ID.; ID.; ID.; RATIONALE.— We explained the rationale of the rule in *People v. Albert,* thus: The rationale behind the rule is that courts must proceed with more care where the possible punishment is in its severest form — death — for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose then is to avoid improvident pleas of guilt on the part of an accused when grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequences of his plea. Moreover, the requirement of taking further evidence would aid the Supreme Court on appellate review in determining the propriety or impropriety of the plea. It is not enough to inquire as to the voluntariness of the plea; the court must explain

fully to the accused that once convicted, he could be meted the death penalty; that death is a single and indivisible penalty and will be imposed regardless of any mitigating circumstance that may have attended the commission of the felony. Thus, the importance of the court's obligation cannot be overemphasized, for one cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilty, he may be imposed a lesser penalty, which was precisely what happened here.

3. ID.; ID.; ID.; ID.; RULE NOT SATISFACTORILY COMPLIED WITH IN CASE AT BAR; LACK OF MONEY TO DEFEND THE CASE AND THE BELIEF THAT THE PENALTY WOULD BE REDUCED ARE NOT SUFFICIENT REASONS TO ALLOW A CHANGE OF PLEA FROM NOT GUILTY TO ONE OF GUILTY.— The trial court proffered the following questions to accused-appellant to determine the voluntariness and full comprehension of his change of plea from "not guilty" to "guilty", thus: xxx. Clearly, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was not satisfactorily complied with. The trial court should have taken the necessary measures to see to it that accused-appellant really and freely comprehended the meaning, full significance and consequences of his plea but it did not. It failed to explain to accused-appellant that the penalty imposable for the crime attended by the qualifying circumstance of minority and filiation, as alleged in the Information against him, is death, whether or not he pleads guilty and regardless of the presence of other mitigating circumstances. Accused-appellant's justification that he had no money to defend his case and his belief that the penalty would be reduced if he pleaded guilty were not sufficient reasons for the trial court to allow a change of plea from not guilty to one of guilty. It was the duty of the judge to see to it that the accused did not labor under this mistaken impression.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE BOTH ALLEGED AND PROVEN BEYOND REASONABLE DOUBT TO JUSTIFY THE IMPOSITION OF THE PENALTY OF DEATH.— In the prosecution of criminal cases, especially those involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to

constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form. As a qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused-appellant must be both alleged and proven beyond reasonable doubt.

5. ID.; ID.; ID.; THERE MUST BE INDEPENDENT EVIDENCE PROVING THE AGE OF THE VICTIM AND HER RELATIONSHIP WITH THE ACCUSED, OTHER THAN THE TESTIMONIES OF THE PROSECUTION WITNESSES AND THE ABSENCE OF DENIAL BY THE ACCUSED.— Here, the Information alleged the concurrence of the victim's minority and her relationship to accused-appellant. However, except for the bare testimony of the victim and her mother as to the former's age as well as their filiation to the accused-appellant, no birth certificate or baptismal certificate or school record and marriage contract exist on record to prove beyond reasonable doubt the victim's age or her minority at the time of the commission of the offense. In *People v. Tabanggay*, we held: Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence. In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. . . . [We] cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed.

6. ID.; ID.; ID.; IF NOT PROVE BEYOND REASONABLE DOUBT, THE ACCUSED SHOULD BE CONVICTED ONLY OF SIMPLE RAPE; IMPOSABLE PENALTY.— There is no showing that the victim's birth certificate and accused-appellant's marriage contract were lost or destroyed or were unavailable without the prosecution's fault. Therefore, the prosecution failed to prove beyond reasonable doubt that the alleged special qualifying circumstance of minority attended the commission of the crime of rape. Hence, accused-appellant should be convicted only of simple rape. Simple rape is punishable by a single indivisible penalty of *reclusion perpetua*. Article 63 of the Revised Penal Code provides that in "all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

7. ID.; SIMPLE RAPE; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— Accordingly, the imposed indemnity and moral damages should be reduced to (₱50,000.00) pursuant to our ruling in *People v. Gonzales,* that upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory. If the death penalty is imposed, the indemnity should be ₱75,000.00; otherwise, the victim is entitled to ₱50,000.00. An additional ₱50,000.00 should be awarded as moral damages. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award. Finally, the award of exemplary damages in the amount of ₱25,000.00 is in order. Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape. In this case, victim AAA was raped by her own father. Accused-appellant admitted the allegation of such relationship in his direct testimony. Hence, complainant is entitled to the award of exemplary damages in the amount of ₱25,000.00 in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us on automatic review is the Decision[1] of the Court of Appeals (CA) dated June 30, 2006 in *CA-G.R. CR-H.C. No. 01896* which affirmed, with modifications, the decision[2] of the Regional Trial Court (RTC) of Bulanao, Tabuk, Kalinga, Branch 25, in Criminal Case No. 85-2003, finding herein accused-appellant guilty beyond reasonable doubt of the crime of **Qualified Rape** committed against his own daughter and sentencing him to suffer the extreme penalty of death.

Consistent with *People v. Cabalquinto*,[3] the Court withholds the real name of the rape victim. Instead, fictitious initials of AAA are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed in this decision.[4] In this regard, the mother is referred to as BBB.

In three (3) separate Informations[5] dated September 15, 2003, accused-appellant was charged with three (3) counts of rape committed against his own 14-year old daughter AAA on September 5, 7, and 9, 2003. Except for the dates of the

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justice Amelita G. Tolentino and Associate Justice Santiago Javier Ranada concurring; *rollo*, pp. 3-14.

[2] Penned by Judge Milnar T. Lammawin; CA *rollo*, pp. 10-19.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] *People v. Guillermo*, G.R. No. 173787, April 23, 2007, 521 SCRA 597, 599.

[5] *Supra* note 2 at 11-12.

commission of the crime, the Informations were identically worded, thus:

CRIM. CASE NO. 85-2003

The undersigned accuses [accused-appellant], a detention prisoner at the PNP of Tabuk, of the crime of RAPE, defined and penalized under Republic Act Numbered 8353, committed as follows:

That on or about September 5, 2003 at San Julian, Tabuk, Kalinga, and within the jurisdiction of this Honorable Court, the accused, through force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of her daughter [AAA], who is a minor, fourteen (14) years of age, against her will.

CONTRARY TO LAW.[6]

On November 4, 2003, accused-appellant, duly assisted by Atty. Marcelino K. Wacas of the Public Attorney's Office (PAO), entered a plea of "not guilty" in Criminal Case Nos. 85-2003, 86-2003 and 87-2003.[7]

On November 10, 2003, the PAO lawyer verbally moved to be relieved as counsel for accused-appellant and with the latter's concurrence, the motion was granted. In his stead, Atty. Daniel Dapeg of the Integrated Bar of the Philippines Legal Aid Pilot Project was appointed as accused-appellant's counsel *de oficio*.[8]

During the pre-trial conference held on November 12, 2003, accused-appellant, assisted by counsel, manifested his desire to plea-bargain. In open court, he expressed willingness to plead guilty in Criminal Case No. 85-2003, on the condition that the Informations in Criminal Case Nos. 86-2003 and 87-2003 be withdrawn. Victim AAA, assisted by her mother BBB and the provincial prosecutor, expressed her conformity thereto.[9]

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

[7] RTC Record, p. 18.

[8] *Id.* at 21.

[9] TSN, dated November 12, 2003, pp. 3-8.

Thus, accused-appellant entered a new plea of "guilty" to the crime of rape in Criminal Case No. 85-2003.[10] This was done with the assistance of counsel *de oficio* and after the trial court conducted searching inquiry into the voluntariness and full comprehension of the consequences of the accused-appellant's plea.

Thereafter, the trial court commenced with the reception of evidence to prove accused-appellant's guilt and degree of culpability.

The prosecution presented the victim AAA and her mother BBB as witnesses, while accused-appellant testified on his own defense.

After trial, the court *a quo* rendered its Decision on November 28, 2003 imposing upon the accused-appellant the supreme penalty of death thus:

> Accordingly, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of rape attendant the qualifying and aggravating circumstances of minority and relationship, victim [AAA] being 15 years old and daughter of [accused-appellant] and hereby sentences the said accused the supreme penalty of death and to indemnify minor victim ₱75,000.00, by way of civil indemnity, moral damages in the amount of ₱100,000.00 and ₱50,000.00 by way of exemplary damages, plus cost.
>
> Transmit the record of the case to the Office of the Clerk of Court, Supreme Court of the Philippines for review.
>
> SO ORDERED.[11]

The records of these cases were forwarded to this Court for automatic review, in view of the death penalty imposed.

In our Resolution[12] of August 10, 2004, We accepted the appeal and directed the Chief, Judicial Records Office, to send notices to the parties to file their respective briefs and to the

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[10] RTC Record, p. 25.

[11] CA Record, p. 19.

[12] *Id.* at 23.

Director of the Bureau of Corrections, to confirm the detention of the accused at the National Penitentiary. Accused-appellant filed his Appellant's Brief[13] on April 11, 2005, while the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief[14] on May 31, 2005.

Conformably with this Court's decision in *People v. Mateo*,[15] accused-appellant's appeal by way of automatic review was transferred to the CA where it was docketed as *CA-G.R. CR-H.C. No. 01896.*

The prosecution, through the testimonies of the victim (AAA) and witness (BBB), the victim's mother, established the following facts:

> [AAA], then fourteen (14) years old having been born on October 2, 1988, is the daughter of the [accused-appellant] and BBB, a barangay midwife; they were married on May 10, 1986. On September 5, 2003 at around 2:00 in the afternoon, [AAA], a third year high school student at Tabuk National High School was in their house together with her mentally retarded sister CCC. At that time, their mother [BBB] was in San Julian Elementary School. Suddenly [AAA]'s father [accused-appellant], a farmer, arrived drunk and forced the victim to have sexual intercourse with him. She struggled but her efforts were in vain since [accused-appellant] was strong. [Accused-appellant] removed his pants and pinned the victim on the bed, pulled down her pants and inserted his penis into her vagina. [AAA] cried. After doing the bestial act, [accused-appellant] left but not before threatening [AAA] that he would kill her, her mother and siblings if she reported the matter. As further testified by the victim, she had been sleeping with her father on the cement floor of their unfinished house for some time and that her father started staying with them only in 2002 since he had been staying in Laguna as a soldier in the Philippine Army.
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> Terrified and disgusted by what happened to her, the victim left home on September 10, 2003. She stayed in the house of Rita Carbonel

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[13] *Id.* at 38-49.

[14] *Id.* at 66-77.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

in San Francisco, Tabuk, Kalinga. On September 11, 2003, [BBB] came looking for her and it was only then that the victim revealed the sexual assaults committed by her father. Without delay, [BBB] accompanied her daughter to the police headquarters where the victim's statement was taken.

[BBB] testified that she and [accused-appellant] were married on May 10, 1986 at Calanasan, Cagayan. Although she did not present any document to prove such assertion nor did she expressly and categorically state that [accused-appellant] was the victim's father, the victim repeatedly referred to [accused-appellant] as her father all throughout her testimony. Their relationship was never refuted by the [accused-appellant] who in fact admitted in open court that [AAA] was one of his daughters.

On the other hand, accused-appellant testified on his own version of the events which transpired on September 5, 2003:

For his part, [accused-appellant] testified that on September 5, 2003, he came home drunk and fell asleep naked on the cemented floor; that he was awakened when someone placed a mat and a blanket for him. He thought that his daughter was his wife, so he had sex with her. [Accused-appellant] manifested remorse and declared that he pleaded guilty as he had no money to fight his case also to secure a reduction of the penalty that will be imposed on him.

On June 30, 2006, the CA promulgated the herein challenged decision affirming in most part the decision of the trial court with modification only in the amount of the award of moral and exemplary damages. Pertinently, the CA decision reads in part:

With respect to the civil aspect of the crimes, We sustain the award of civil indemnity in the amount of ₱75,000.00 since rape was committed in its qualified form. However, the trial court's award of ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages must be modified. In line with existing jurisprudence, the award of moral damages should be in the amount of ₱75,000.00, without need of further proof. Likewise, exemplary damages is reduced to ₱25,000.00 in line with existing jurisprudence.

A final note: Notwithstanding current moves for the abolition of the death penalty, no legislation or rules have yet been promulgated relative thereto as of the time of the writing of his Decision, hence

We are constrained to affirm the penalty imposed by the court *a quo* which We find to be conformable to the facts and existing law.

WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION that the award of moral damages is reduced to ₱75,000.00 and exemplary damages to ₱25,000.00 or a total of ₱175,000.00. Let the record of this case be elevated to the Honorable Supreme Court for review pursuant to Rule 124, Section 13 of the Revised Rules on Criminal Procedure as amended by A.M. No. 00-5-03-SC.

SO ORDERED.

On April 23, 2007, the CA forwarded the records of the case to this Court for automatic review.[16]

In the Resolution[17] dated June 26, 2007, We required the parties to simultaneously submit their respective supplemental briefs. However, the parties filed separate manifestations stating that they were waiving the filing of supplemental briefs and instead opted to stand by their respective briefs filed with the CA.

In his Brief, accused-appellant alleged that the trial court gravely erred in imposing on him the supreme penalty of death.

Before delving into the main issue of the case, it is necessary to determine whether the trial court has satisfied the requirement as mandated by Rule 116 of the Rules on Criminal Procedure, which provides:

SEC. 3. Plea of guilty to capital offense; reception of evidence.- When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence on his behalf.

Explicitly, when the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness

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[16] *Rollo*, p. 1.

[17] *Id.* at 17.

and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of his culpability. The accused may also present evidence on his behalf. Under the foregoing Rule, three things are enjoined upon the trial court when a plea of guilty to a capital offense is entered: (1) the court must conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) the court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) the court must ask the accused if he desires to present evidence on his behalf and allow him to do so if he desires.[18]

We explained the rationale of the rule in *People v. Albert*,[19] thus:

> The rationale behind the rule is that courts must proceed with more care where the possible punishment is in its severest form—death—for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose then is to avoid improvident pleas of guilt on the part of an accused when grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequences of his plea. Moreover, the requirement of taking further evidence would aid the Supreme Court on appellate review in determining the propriety or impropriety of the plea.

It is not enough to inquire as to the voluntariness of the plea; the court must explain fully to the accused that once convicted, he could be meted the death penalty; that death is a single and indivisible penalty and will be imposed regardless of any mitigating circumstance that may have attended the commission of the felony. Thus, the importance of the court's obligation cannot

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[18] *People v. Murillo*, G.R. No. 134583, July 14, 2004, 434 SCRA 342, 349.

[19] *People v. Albert*, G.R. No. 114001, December 11, 1995, 251 SCRA 136, 145-146.

be overemphasized, for one cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilty, he may be imposed a lesser penalty,[20] which was precisely what happened here.

The trial court proffered the following questions to accused-appellant to determine the voluntariness and full comprehension of his change of plea from "not guilty" to "guilty," thus:[21]

COURT

Q Mr. Lopit y Abulao you have been arraigned yesterday with the Information for Rape in Criminal Case No. 85-2003, did you confer with your newly designated counsel *de oficio* regarding your plea?

WITNESS

A Yes, Your Honor.

Q After having been confer *(sic)* with him that you entered a plea of guilty for the Information of Rape you voluntary done *(sic)* of your own perception?

A Yes, Your Honor.

Q Will you tell us the reason why you have pleaded guilty to the offense?

A I have no money to fight my case, Your Honor.

Q Is that the reason why you have admitted or because you are repenting for the intention you have committed?

A That is the only reason, Your Honor.

Q Are you telling us that you did not rape your daughter?

A No, Your Honor.

Q If you did not rape your daughter, why did you plead guilty?

A Atty. Wagas told me to admit one case in order to reduce the penalty, Your Honor.

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[20] *People v. Ibañez*, G.R. Nos. 133923-24, July 30, 2003, 407 SCRA 406, 415-416.

[21] TSN, dated November 13, 2003, pp. 4-5.

Q In fact there are three (3) Criminal Cases for Rape allotted against you involving your daughter, is that correct?

A Yes, Your Honor.

Q Did you believe that beneficial to you to admit one?

A Yes, Your Honor.

Q And that is the reason you pleaded guilty?

A Yes, Your Honor.

Q Is it not therefore the lack of money that to fight a case and prompted you to plea of guilty?

A Yes, both Your Honor.

Q So it is the reason?

A Yes Your Honor.[22]

Clearly, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was not satisfactorily complied with. The trial court should have taken the necessary measures to see to it that accused-appellant really and freely comprehended the meaning, full significance and consequences of his plea but it did not. It failed to explain to accused-appellant that the penalty imposable for the crime attended by the qualifying circumstance of minority and filiation, as alleged in the Information against him, is death, whether or not he pleads guilty and regardless of the presence of other mitigating circumstances. Accused-appellant's justification that he had no money to defend his case and his belief that the penalty would be reduced if he pleaded guilty were not sufficient reasons for the trial court to allow a change of plea from not guilty to one of guilty. It was the duty of the judge to see to it that the accused did not labor under this mistaken impression.

Still, the trial court's shortcomings will not necessarily result in accused-appellant's acquittal. The evidence for the prosecution, independently of accused-appellant's plea of guilty, adequately established his guilt beyond reasonable doubt as charged in the Informations. The testimony of the victim AAA is worthy of

[22] TSN, dated November 13, 2003, pp. 4-5.

belief and enough to convict accused-appellant. She testified in a candid, straightforward and categorical manner. She narrated in open court that on September 5, 2003, she was ravished by her own father. She recalled thus:

> My mother went to San Juan Elementary School at 2: o'clock he was forcing me but I refused. He was strong and I kicked him and he put my pants down and then he took advantage of me.[23]

AAA recounted how accused-appellant was able to insert his private organ into hers in the midst of her tears and in full view of her mentally challenged sister who was unfortunately oblivious of their father's dastardly act.[24] After satisfying his bestial instinct, accused-appellant left his daughter AAA with a threat: *"No agipulong ka, patayen kayo amin."* (If you will report, I will kill you all).[25]

Thus, accused-appellant's plea of guilty effectively corroborated and substantiated victim AAA's allegation that accused-appellant indeed raped her.

In his Brief, accused-appellant does not question his conviction for raping his own daughter. He only assails the imposition of the death penalty by the CA. Accused-appellant contends that while the Information alleged the qualifying circumstances of both his relationship to the victim and the latter's minority, the prosecution failed to prove beyond reasonable doubt these qualifying circumstances. The People through the OSG, while maintaining that accused-appellant's guilt has been proven beyond reasonable doubt, agrees that accused-appellant should only be convicted of simple rape, as the qualifying circumstances of the victim's minority and her filiation with accused-appellant were not proven beyond reasonable doubt.

We agree.

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[23] TSN, dated November 12, 2003, p. 14.

[24] *Id.* at 15.

[25] *Id.* at 16.

Article 266 of the Revised Penal Code, as amended by RA 7659 and further amended by RA 8353, provides:

Art. 266-A. Rape. When and how committed. — Rape is committed —

1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

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:

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;

In the prosecution of criminal cases, especially those involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form. As a qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused-appellant must be both alleged and proven beyond reasonable doubt.[26]

Here, the Information alleged the concurrence of the victim's minority and her relationship to accused-appellant. However, except for the bare testimony of the victim and her mother as to the former's age as well as their filiation to the accused-

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[26] *People v. Ramos*, G.R. No. 142577, December 27, 2002, 394 SCRA 452, 469.

appellant, no birth certificate or baptismal certificate or school record and marriage contract exist on record to prove beyond reasonable doubt the victim's age or her minority at the time of the commission of the offense. In *People v. Tabanggay*,[27] we held:

> Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.
>
> In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. x x x [We] cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed.

There is no showing that the victim's birth certificate and accused-appellant's marriage contract were lost or destroyed or were unavailable without the prosecution's fault. Therefore, the prosecution failed to prove beyond reasonable doubt that the alleged special qualifying circumstance of minority attended the commission of the crime of rape. Hence, accused-appellant should be convicted only of simple rape. Simple rape is punishable by a single indivisible penalty of *reclusion perpetua*. Article 63 of the Revised Penal Code provides that in "all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

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[27] G.R. No. 130504, June 29, 2000, 334 SCRA 575, 600-601.

Accordingly, the imposed indemnity and moral damages should be reduced to (₱50,000.00) pursuant to our ruling in *People v. Gonzales*,[28] that upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory. If the death penalty is imposed, the indemnity should be ₱75,000.00; otherwise, the victim is entitled to ₱50,000.00. An additional ₱50,000.00 should be awarded as moral damages. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.

Finally, the award of exemplary damages in the amount of ₱25,000.00 is in order. Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape. In this case, victim AAA was raped by her own father. Accused-appellant admitted the allegation of such relationship in his direct testimony. Hence, complainant is entitled to the award of exemplary damages in the amount of ₱25,000.00 in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters.[29]

WHEREFORE, the Decision dated June 30, 2006 of the CA is *AFFIRMED* with *MODIFICATION* in that accused-appellant is found *GUILTY* beyond reasonable doubt of *SIMPLE RAPE* and is sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim AAA, indemnity *ex delicto* of ₱50,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱25,000.00. No pronouncement as to costs.

SO ORDERED.

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[28] G.R. No. 140676, July 31, 2002, 385 SCRA 573, 587-588.

[29] *People v. Viajedor*, G.R. No. 148138, April 11, 2003, 401 SCRA 312, 331.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Brion, JJ.,* concur.

Corona, J., on official leave.

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