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OF THE

PHILIPPINES

FROM

FEBRUARY 16, 2009 TO MARCH 4, 2009

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 169780. February 16, 2009]

ALFREDO A. MENDROS, JR., *petitioner, vs.* **MITSUBISHI MOTORS PHILS. CORPORATION (MMPC),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; REQUIREMENTS FOR VALIDITY. — Decisional law teaches that the requirements for a valid retrenchment are: (1) that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) that the employer serves written notice both to the employees concerned and the DOLE at least a month before the intended date of retrenchment; (3) that the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) that the employer exercises its prerogative to retrench in good faith; and (5) that it uses fair and reasonable criteria in ascertaining who would be retrenched or retained.

2. ID.; ID.; ID.; ID.; ESSENTIAL REQUISITES FOR A VALID RETRENCHMENT, PRESENT. — We are one with the appellate court in finding that the essential requisites for a valid

retrenchment laid down by law and jurisprudence are obtaining. *First*, there can hardly be any dispute that MMPC suffered substantial and heavy losses in FY 1997 and continued to bleed in 1998. Even the NLRC conceded this reality. To be precise, MMPC, as duly shown in its AFS for those fiscal years, incurred an aggregate loss of PhP 1.242 billion for its two-year operation. To be sure, the AFS in question and necessarily the figures appearing therein cannot be assailed as self-serving, as these documents were prepared and signed by SGV & Co., a firm of reputable independent external auditors. Any suggestion that a billion peso plus loss is *de minimis* in extent has to be dismissed for sheer absurdity. x x x *Second*, Alfredo cannot plausibly feign ignorance that MMPC was in dire straits in 1997 and 1998. Neither can he impugn the *bona fides* of MMPC's retrenchment strategy. Recall that MMPC, while experiencing business reverses, implemented expense-cutting measures starting from reduction on the use of utilities and office supplies, curtailing of representation and travel expenses and deferring the implementation of set projects and programs. It froze hiring and letting its casual employees and trainees go. And as the records show, a reduced work week was set in place for managerial employees who, doubtless at management's behest, agreed to a 5% salary cut. In fine, the retrenchment of Alfredo's batch on July 2, 1999 was not a spur-of-the-moment decision, but was resorted to after cutbacks to minimize operational expenses have been explored, but failed to forestall business losses. In fact, MMPC risked and in fact faced suits by effecting two earlier retrenchment actions, itself an indicium that it imposed the retrenchment on Alfredo in good faith, not to circumvent his security of tenure. *Third*, it bears to state that the aforequoted Art. 283 of the Code uses the phrase "retrenchment to prevent losses." The phrase necessarily implies that retrenchment may be effected even in the event only of imminent, impending, or expected losses. The employer need not wait for substantial losses to materialize before exercising ultimate and drastic option to prevent such losses. In the case at bench, MMPC was already financially hemorrhaging before finally resorting to retrenchment. *Fourth*, MMPC had complied with the prior written notice and separation pay requirements. Alfredo was duly apprised of his fate a month before the effectivity of his retrenchment, and the DOLE duly informed

likewise a month before the July 2, 1999 effectivity through a letter dated May 31, 1999 sent on June 1, 1999. And as determined by the labor arbiter, it appears that the retrenched employees have already received their separation benefits of one-month salary for every year of service, except perhaps those who opted to challenge their retrenchment. Finally, as the Court sees it, the merit rating system MMPC adopted as one of the criteria for selecting who are to be eased out was fair and reasonable under the premises.

3. ID.; ID.; ID.; ID.; EVALUATION METHOD PROVIDED IN THE CBA IN DETERMINING THE EMPLOYEES TO BE RETRENCHED, UPHELD AS VALID AND REASONABLE; RULES ON THE INTERPRETATION OF CONTRACTS, APPLIED.— It is well-entrenched that if the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the stipulations shall control. Courts, in appropriate cases, will intervene only when the terms of the contract are ambiguous or uncertain and only to construe them to seek the real intent of the parties and not to alter them. Just as settled is the rule that contracts should be so construed as to harmonize and give effect to the different provisions of these contracts. Under Art. 1374 of the Civil Code, contracts cannot be construed by parts; stipulations and clauses must be considered in relation to one another to give effect to the whole. The legal effect of a contract is not determined alone by any particular provision disconnected from all others, but from the whole read together. Following the above rules, the aforequoted Secs. 1 and 2 should be read as qualifying the factors mentioned in the succeeding Sec. 5(c). It may be that Sec. 5(c) mentions only "seniority" and "needs of the company" as factors to be considered in the retrenchment selection process. But these twin factors cannot plausibly be given exclusivity for Sec. 1 is clear in that the factors or criteria provided therein, *i.e.*, seniority, efficiency and attitude, job knowledge and potential, and attendance, are to be considered in the exercise of management as regards lay-off, among other personnel movements. Sec. 5 ought not to be treated alone, isolated from kindred provisions. Sec. 1, Art. V of the CBA, to reiterate, allows MMPC, in the exercise of its customary management functions and prerogatives on matters of promotions, transfer, lay-off, and recall, to consider as guiding

norms the following factors or criteria: "Seniority, Efficiency and Attitude, Job Knowledge and Potential, and Attendance." And to complement this prerogative, the company, in the same section, is given the discretion to "exercise just and fair evaluation of such factors," meaning that the company is accorded a reasonable latitude to assign a corresponding weight to each factor. On the other hand, Sec. 2 merely defines or describes the factors or criteria mentioned in Sec. 1. As couched, Sec. 1 is explicit in providing the criteria or factors for all employee movements. A reading of the other provisos would show the following: Sec. 3 on PROMOTIONS does not specifically mention any criterion or factor, logically implying that the factors expressly mentioned in Sec. 1 shall apply to promotional appointments; Sec. 4 on TRANSFERS, on the other hand, provides that the factors mentioned in Sec. 1 apply; Sec. 5 on LAY-OFFS provides the factors of seniority and needs of the company; while Sec. 6 on RECALLS TO WORK provides the sole factor of seniority. Given the way the provisions were couched relative to Sec. 1, it is clear to our mind, despite the seeming limited factors provided in Secs. 5 and 6, that the factors or criteria provided in Sec. 1, as defined in Sec. 2, encompass and apply to all employee movements. Alfredo's posture that the Sec. 1 criteria are to be viewed as a general standard and must be made to yield to those specifically provided in Sec. 5(c) is specious at best and does not commend itself for concurrence. As aptly noted by the CA, the Sec. 5(c) "needs of the company" factor, if viewed by its lonesome self without linking it to the Sec. 1 criteria, would be a meaningless, if not unreasonable, standard. Worse still, it may well-nigh give MMPC a carte blanche and unchecked license to determine what the needs of the company would be relative to the lay-off, retrenchment, or retention of any employee. Such construal as espoused by Alfredo cannot be allowed for Sec. 1 expressly mandates the use of salient criteria to be considered in lay-off situation and other personnel movements. In all, there is really no irreconcilable conflict between Secs. 1 and 5; they can and ought to be harmonized and read in conjunction with each other. The proper view, therefore, is that the Sec. 1 criteria qualify the factors of "seniority and needs of the company" in Sec. 5(c). Stated a bit differently, Sec. 5(c) should be understood in the light of Sec. 1 which, to stress, provides seniority, efficiency and attitude, job knowledge and potential, and attendance as

among the factors that should guide the company in choosing the employees to be laid-off or kept. All other things being equal, a company would necessarily need to retain those who had rendered dedicated and highly efficient service and whose knowledge, attendance, and potential hew with company standards. Any other measure would be senseless in the business viewpoint. Accordingly, the merit rating used by MMPC based on Sec. 5 in conjunction with and as qualified by the factors provided under Sec. 1 is fair and reasonable, and, to be sure, well within the contemplation of the parties' CBA. In fact, Alfredo, shorn of the contention that the merit rating is against the CBA, has not shown any arbitrariness on the part of MMPC in the evaluation, selection, and retrenchment of employees.

APPEARANCES OF COUNSEL

Cadiz Tabayoyong & Valmores for petitioner.
Imelda Abadilla Brown for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal, via a petition for review under Rule 45, from the Decision[1] dated November 18, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 84790 which reversed and set aside the Resolutions dated September 23, 2002[2] and January 30, 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 028205-01, and reinstated the February 27, 2001 Decision[3] of the Labor Arbiter in NLRC Case No. RAB-IV-9-11454-99-R.

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[1] *Rollo*, pp. 68-80. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Rebeccah De Guia-Salvador and Aurora Santiago-Lagman.

[2] *Id*. at 139-149. Penned by Commissioner Alberto R. Quimpo and concurred in by then Presiding Commissioner Roy V. Señeres and Commissioner Vicente S.E. Veloso.

[3] *Id.* at 99-106. Penned by Labor Arbiter Enrico Angelo C. Portillo.

The Facts

From the petition and its annexes, the respondent's comment thereto, and the parties' respective memoranda, the Court gathers the following facts:

In April 1994, respondent Mitsubishi Motors Philippines Corporation (MMPC) hired petitioner Alfredo A. Mendros, Jr. as regular body prepman, later promoting him as assembler major in the company's manufacturing division.

Due to the severe drastic slump of its vehicle sales brought about by the financial crisis that hit the country and other Asian economies in 1997, MMPC, per its audited financial statements, sustained a financial loss of PhP 470 million in 1997 and PhP 771 million in 1998. In the face of these setbacks and in a bid to cushion the impact of its business reversals and continue operations, MMPC implemented various cost-cutting measures, such as but not limited to: cost reduction on the use of office supplies and energy, curtailment of representation and travel expenses, employment-hiring freeze, separation of casuals and trainees, manpower services (guards and janitorial services) reduction, intermittent plant shutdowns, and reduced work week for managerial and other monthly-salaried personnel.

In February 1998, MMPC finally instituted the first stage of its retrenchment program affecting around 531 hourly manufacturing employees, a step which later proved not adequate enough to stem business reverses. Hence, after holding special labor-management meetings with the hourly union, MMPC launched a temporary lay-off program to cover some 170 hourly employees. This batch included Alfredo who, sometime in January 1999, received a letter dated December 19, 1998, informing him of the temporary suspension of his employment, inclusive of benefits. As there indicated, the temporary lay-off scheme, initiated due to continuing business contraction, was for six months from January 4 to July 2, 1999.

In the interim, MMPC updated the temporarily-suspended Alfredo, *et al*. of its business condition.

As later events unfolded, the temporary lay-off move was still not enough to avert further losses. In fact, the market situation even slid down. This development impelled MMPC to embark on another retrenchment program affecting the hourly employees. Accordingly, on May 31, 1999, MMPC sent separate notices to Alfredo and other affected personnel advising them of their permanent lay-off, but with retrenchment benefits, effective July 2, 1999. The drop in company sales and market share was the stated reason for MMPC's latest move. As in the first instance, a copy of the audited financial statements (AFS) was not appended to the letter-notice to substantiate, as Alfredo would later bemoan, the acute business losses MMPC claimed to have suffered.

It may be mentioned at this juncture that the July 1999 retrenchment of 170 hourly employees was preceded by the retrenchment of monthly-salaried MMPC employees. In effect, therefore, the lay-off of the 170 employees was the second retrenchment implemented by MMPC in 1999 and the third since 1998.

On June 1, 1999, a letter dated May 31, 1999 and addressed to Director Alex Maraan was filed with the Department of Labor and Employment (DOLE), advising him that the temporary lay-off of the 170 MMPC hourly employees is being made permanent effective July 2, 1999 due to continuing adverse market conditions.

In September 1999, Alfredo filed a case for illegal dismissal and damages before the NLRC's Regional Arbitration Branch No. IV, docketed as NLRC Case No. RAB-IV-9-11454-99-R.

The Ruling of the Labor Arbiter

Conciliation efforts having failed, hearings were held, followed by a directive for the submission of position papers. In its position paper, MMPC defined the criteria used in considering employees for retrenchment. And among the documents it filed together with its pleadings were its 1997-1996 and 1998-1997 *Financial Statements* prepared by SGV & Co. On February 27, 2001, Labor Arbiter Enrico Portillo rendered a Decision finding for

MMPC and against Alfredo, his complaint for illegal temporary lay-off and retrenchment being dismissed.[4]

From the arbiter's ruling, Alfredo appealed to the NLRC, its appeal docketed as NLRC NCR CA No. 028205-01.

The Ruling of the NLRC

The NLRC saw things differently. By Resolution dated September 23, 2002, the NLRC's First Division reversed and set aside the decision of Labor Arbiter Portillo, disposing as follows:

> IN VIEW THEREOF, the judgment appealed from is hereby REVERSED and SET ASIDE and a new one ENTERED declaring the temporary lay-off / retrenchment as illegal and ordering the respondent [MMPC] to immediately reinstate the complainant [Alfredo] to his former position without loss of seniority rights and other benefits accorded the regular employees pursuant to their Collective Bargaining Agreement, with full backwages which as of September 16, 2002 amounts to ₱447,349.99.
>
> A ten percent (10%) attorney's fee is likewise adjudged.
>
> The computation submitted by the Computation and Examination Unit is hereby adopted as Annex "A" and an integral part hereof.
>
> SO ORDERED.[5]

While it agreed with the labor arbiter's holding on MMPC's compliance with the substantive and procedural requirements for retrenchment, the NLRC deemed the merit rating system adopted by MMPC as additional and dominant criterion for retrenchment to be erroneous and arbitrary, being against the parties' then prevailing Collective Bargaining Agreement (CBA). The CBA, according to the NLRC, listed only "seniority" and "needs of the company" as determinative factors in the selection of who shall be laid off. To the NLRC, MMPC's arbitrary way and the fact that it did not notify Alfredo beforehand of

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[4] *Id*. at 106.

[5] *Supra* note 2, at 147-148.

the additional criterion, not to mention the findings of the merit valuation, vitiated the retrenchment proceedings.

By Resolution of January 30, 2004, the NLRC denied MMPC's motion for reconsideration, sending the company to the CA on a petition for *certiorari*, its recourse docketed as CA-G.R. SP No. 84790.

The Ruling of the CA

On November 18, 2004, the appellate court rendered the appealed Decision finding for MMPC, the dispositive portion of which reads, as follows:

> WHEREFORE, finding merit in the petition, We hereby GRANT the same. The assailed Resolutions of public respondent National Labor Relations Commission (NLRC) are hereby REVERSED and SET ASIDE and the Decision of the Labor Arbiter dated February 27, 2001 is hereby REINSTATED.
>
> SO ORDERED.[6]

In reinstating the labor arbiter's ruling and setting aside that of the NLRC, the appellate court addressed two central issues: *first*, whether MMPC used fair and reasonable criteria in ascertaining who would be retrenched; and *second*, whether MMPC should have had furnished Alfredo copies of its AFS and the findings of its merit evaluation. It resolved the first issue in the affirmative and the second in the negative.

Following the denial of his motion for reconsideration, per the CA's resolution of September 13, 2005, Alfredo interposed this petition.

The Issues

Petitioner Alfredo, through his Memorandum, raises the following issues for our consideration:

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[6] *Supra* note 1, at 79-80.

I.

WHETHER OR NOT PETITIONER'S RETRENCHMENT WAS ILLEGAL.

A.

WHETHER OR NOT MERIT RATING AND RANKING ARE PART OF THE CBA MANDATED CRITERIA IN DETERMINING THE REGULAR EMPLOYEE TO BE RETRENCHED.

B.

WHETHER OR NOT [MMPC] CAN VALIDLY ADOPT MERIT RATING AND RANKING AS PART OF THE CRITERIA IN DETERMINING THE REGULAR EMPLOYEE TO BE RETRENCHED.

C.

WHETHER OR NOT [MMPC] SHOULD HAVE DISCLOSED IN ITS NOTICE OF RETRENCHMENT TO PETITIONER, THE LATTER'S LOW MERIT RATING AND RANKING AS THE PRINCIPAL REASON FOR HIS RETRENCHMENT AND FURNISHED PETITIONER WITH THE CORRESPONDING [AFS] TO SUBSTANTIATE ITS CLAIM OF LOSSES.

D.

WHETHER OR NOT PETITIONER'S RETRENCHMENT CAN BE DEEMED VALID JUST BECAUSE [MMPC'S] EARLIER RETRENCHMENT OF HIS OTHER CO-EMPLOYEES HAD BEEN ADJUDGED BY OUR COURTS TO BE VALID.

II.

WHETHER OR NOT THE [CA] CORRECTLY FOUND THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING AND SETTING ASIDE THE DECISION OF LABOR ARBITER PORTILLO AND ORDERING THE REINSTATEMENT x x x.[7]

The fundamental issues tendered actually boil down to the legality and/or validity of Alfredo's temporary lay-off and eventual retrenchment.

The Court's Ruling

We deny the petition.

The right of management to retrench or to lay-off workers to meet clear and continuing economic threats or during periods of economic recession to prevent losses is recognized[8] by Article 283 of the Labor Code, as amended, partly providing:

> Art. 283. *Closure of establishment and reduction of personnel*.— The employer may also terminate the employment of any employee due to x x x **retrenchment to prevent losses** or the closing or cessation of operations of the establishment x x x by serving a written notice on the worker and the [DOLE] at least one month before the intended date thereof. x x x In case of retrenchment to prevent losses, the separation pay shall be equivalent to one (1) month pay or at least one-half month pay for every year of service whichever is higher. x x x (Emphasis ours.)

Decisional law teaches that the requirements for a valid retrenchment are: (1) that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) that the employer serves written notice both to the employees concerned and the DOLE at least a month before the intended date of retrenchment; (3) that the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) that the employer exercises its prerogative to retrench in good faith;

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[7] *Rollo*, pp. 410-411.

[8] *Asian Alcohol Corporation v. NLRC*, G.R. No. 131108, March 25, 1999, 305 SCRA 416, 428.

and (5) that it uses fair and reasonable criteria in ascertaining who would be retrenched or retained.[9]

In *F.F. Marine Corporation v. National Labor Relations Commission*, the Court expounded on the concept, requisites, and justification of retrenchment in the following wise:

> Retrenchment is the termination of employment initiated by the employer through no fault of the employees x x x resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. Retrenchment is a valid management prerogative. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.
>
> There are three (3) basic requisites for a valid retrenchment to exist, to wit: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay x x x.
>
> Jurisprudential standards to justify retrenchment have been reiterated by this Court in a long line of cases to forestall management abuse of this prerogative, *viz*:
>
> > . . . . Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences x x x. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should

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[9] *Id.* at 429-430.

> have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes", can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, ***the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means***—*e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, x x x costs, *etc*.—have been tried and found wanting.
>
> Lastly, x x x ***alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.*** The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[10] (Emphasis supplied.)

Given the foregoing legal perspective, the resolution of the basic core issue should be in the affirmative. We are one with the appellate court in finding that the essential requisites for a valid retrenchment laid down by law and jurisprudence are obtaining.

First, there can hardly be any dispute that MMPC suffered substantial and heavy losses in FY 1997 and continued to bleed in 1998. Even the NLRC conceded this reality. To be precise, MMPC, as duly shown in its AFS for those fiscal years,[11] incurred an aggregate loss of PhP 1.242 billion for its two-year operation. To be sure, the AFS in question and necessarily the figures appearing therein cannot be assailed as self-serving, as these documents were prepared and signed by SGV & Co., a firm of reputable independent external auditors. Any suggestion that

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[10] G.R. No. 152039, April 8, 2005, 455 SCRA 154, 164-167; citations omitted.

[11] *Rollo*, pp. 201-203. MMPC's AFS for 1997 and 1998.

a billion peso plus loss is *de minimis* in extent has to be dismissed for sheer absurdity.

Alfredo's lament about not being furnished a copy of the 1997-1996 and 1998-1997 AFS and other financial documents, as well as the finding of the merit evaluation rating, at the time he was notified of his lay-off cannot be accorded tenability. The CA explained succinctly why:

> x x x There is no law or rule that requires an employer to furnish an employee to be retrenched copies of its [AFS] and other documents (*e.g*. finding of its merit evaluation). The law only requires that the employer serve a written notice of the retrenchment on the employee concerned and the [DOLE] at least one (1) month before the intended date thereof. [Alfredo's] contention that he should have been notified of his merit rating in order for him to seek a clarification and even a reconsideration of the same from [MMPC] is without merit. The appropriate forum for an employee to contest the reality or good faith character of the retrenchment asserted as ground for dismissal from employment is before the [DOLE].[12] (Citation omitted.)

Second, Alfredo cannot plausibly feign ignorance that MMPC was in dire straits in 1997 and 1998. Neither can he impugn the *bona fides* of MMPC's retrenchment strategy. Recall that MMPC, while experiencing business reverses, implemented expense-cutting measures starting from reduction on the use of utilities and office supplies, curtailing of representation and travel expenses and deferring the implementation of set projects and programs. It froze hiring and letting its casual employees and trainees go. And as the records show, a reduced work week was set in place for managerial employees who, doubtless at management's behest, agreed to a 5% salary cut. In fine, the retrenchment of Alfredo's batch on July 2, 1999 was not a spur-of-the-moment decision, but was resorted to after cutbacks to minimize operational expenses have been explored, but failed to forestall business losses. In fact, MMPC risked and in fact faced suits by effecting two earlier retrenchment actions, itself an indicium that it imposed the retrenchment on Alfredo in good faith, not to circumvent his security of tenure.

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

Third, it bears to state that the aforequoted Art. 283 of the Code uses the phrase "retrenchment to prevent losses." The phrase necessarily implies that retrenchment may be effected even in the event only of imminent, impending, or expected losses.[13] The employer need not wait for substantial losses to materialize before exercising ultimate and drastic option to prevent such losses. In the case at bench, MMPC was already financially hemorrhaging before finally resorting to retrenchment.

Fourth, MMPC had complied with the prior written notice and separation pay requirements. Alfredo was duly apprised of his fate a month before the effectivity of his retrenchment, and the DOLE duly informed likewise a month before the July 2, 1999 effectivity through a letter dated May 31, 1999 sent on June 1, 1999. And as determined by the labor arbiter, it appears that the retrenched employees have already received their separation benefits of one-month salary for every year of service,[14] except perhaps those who opted to challenge their retrenchment.

Finally, as the Court sees it, the merit rating system MMPC adopted as one of the criteria for selecting who are to be eased out was fair and reasonable under the premises. Alfredo, of course, latches the success of his cause principally on the propriety of the criteria thus adopted, faulting the CA in the manner it construed Art. V of the CBA then governing the employer-employee relationship between MMPC and the hourly employees.

For clarity, we reproduce the pertinent provisions of Art. V of the CBA on lay-off and other personnel/employee movements, specifically Sections 1 to 6, to wit:

ARTICLE V

PROMOTIONS, TRANSFERS, LAY-OFFS
AND RECALLS

SECTION 1. FACTORS TO BE FOLLOWED IN EMPLOYEE MOVEMENTS –– In the exercise of customary functions of

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[13] *Asian Alcohol Corporation, supra* note 8, at 431-432.

[14] *Supra* note 3, at 106.

Management as regards promotions, transfer**, lay-off** and recall, the COMPANY shall be **guided by the following**: **Seniority, Efficiency and Attitude, Job Knowledge and Potential, and Attendance** and the COMPANY shall **exercise just and fair evaluation of such factors**. It is understood that this provision is applicable only to members of the bargaining unit and to movements within the bargaining unit.

SECTION 2. In the application of the foregoing criteria, the following definition shall be observed

(a) SENIORITY; Defined:

1. Department Seniority — starts from the day of permanent assignment to a Production Department or Non-Production Department.
2. Job Security — starts from the day of permanent assignment to the job in Production or Non-Production Department.
3. Corporate Seniority — starts as of the first day of the probationary period of a regular employee.

(b) EFFICIENCY AND ATTITUDE — is defined as follows:

1. Ability to perform good work in accordance with COMPANY standards.
2. Ability to cooperate with supervisory staff and fellow employees.
3. Readiness to accept supervisor's instructions and to perform them properly.
4. Compliance with COMPANY policies, rules and regulations.
5. Physical fitness.

(c) JOB KNOWLEDGE AND POTENTIAL — as defined as follows:

1. Knowledge and ability to perform the job in accordance with COMPANY standards.
2. Possession of broad knowledge of various types of work which will assure satisfactory performance of other work assignments.
3. Adaptability to learn new work procedures.

4. Ability to improve work methods.

(d) ATTENDANCE is defined as follows:

Promptness in reporting to work; in other words, prompt observance of time signals, scheduled starting time, morning and afternoon breaktime, lunch time and quitting time. x x x

SECTION 3. PROMOTIONS — Promotion is the movement of a qualified employee to a higher job classification or lateral movement to a higher level within the same job classification and shall entitle such employee to the appropriate wage range applicable to the new position or job level.

x x x x x x x x x

SECTION 4. TRANSFERS — Transfers are considered movements from one job assignment to another, either on a temporary or permanent basis. In all cases of transfers, whether temporary or permanent, the COMPANY will be **guided by the factors mentioned in Section 1 above**.

x x x x x x x x x

SECTION 5. LAY-OFFS — Lay-Offs shall be guided by the following factors:

(a) TEMPORARY LAY-OFF — is the adjustment or reduction in work force due to x x x and other causes that will necessitate the temporary reduction of work force.

(b) PERMANENT LAY-OFF — is a reduction in work force due to decrease in COMPANY business.

(c) LAY-OFF PROCEDURE — in case of lay-off whether in the Production or Non-Production Departments, all temporary, casual and probationary employees will be laid-off first. **Regular employees will be laid-off taking into consideration corporate seniority (last-in, first-out) and the needs of the COMPANY**.

(d) No employee will be upgraded due to lay-off.

SECTION 6. RECALLS TO WORK — When there is a need to increase the work force after a lay-off, preference shall be given to retrenched employees on the **basis of corporate seniority** and provided they are qualified for the job opening. (Emphasis ours.)

Alfredo argues that since Art. V, Sec 5(c) of the CBA provides for only two factors, *i.e.*, (1) seniority (last-in, first-out) and (2) the needs of the company, to be considered in retrenching MMPC employees, the company is bereft of authority to arbitrarily impose other factors or criteria in effecting his retrenchment.

We are not persuaded.

Evaluation Method Used by MMPC in Determining the Employees to be Retrenched Is in Accord with the CBA

It is well-entrenched that if the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the stipulations shall control.[15] Courts, in appropriate cases, will intervene only when the terms of the contract are ambiguous or uncertain and only to construe them to seek the real intent of the parties and not to alter them.[16]

Just as settled is the rule that contracts should be so construed as to harmonize and give effect to the different provisions of these contracts.[17] Under Art. 1374[18] of the Civil Code, contracts cannot be construed by parts; stipulations and clauses must be considered in relation to one another to give effect to the whole. The legal effect of a contract is not determined alone by any particular provision disconnected from all others, but from the whole read together.[19]

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[15] *Labasan v. Lacuesta*¸ No. L-25931, October 30, 1978, 86 SCRA 16, 21; cited in *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, January 23, 2006, 479 SCRA 462, 467-468.

[16] *New Life Enterprises v. Court of Appeals*, G.R. No. 94071, March 3l, 1992, 207 SCRA 669, 675.

[17] *Reparations Commission v. Northern Lines, Inc.*, No. L-24835, July 31, 1970, 34 SCRA 203, 211.

[18] Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

[19] *Rivera v. Espiritu*, G.R. No. 135547, January 23, 2002, 374 SCRA 351, 363-364; citing *Reparations Commission, supra*.

Following the above rules, the aforequoted Secs. 1 and 2 should be read as qualifying the factors mentioned in the succeeding Sec. 5(c). It may be that Sec. 5(c) mentions only "seniority" and "needs of the company" as factors to be considered in the retrenchment selection process. But these twin factors cannot plausibly be given exclusivity for Sec. 1 is clear in that the factors or criteria provided therein, *i.e.*, seniority, efficiency and attitude, job knowledge and potential, and attendance, are to be considered in the exercise of management as regards lay-off, among other personnel movements. Sec. 5 ought not to be treated alone, isolated from kindred provisions.

Sec. 1, Art. V of the CBA, to reiterate, allows MMPC, in the exercise of its customary management functions and prerogatives on matters of promotions, transfer, lay-off, and recall, to consider as guiding norms the following factors or criteria: "Seniority, Efficiency and Attitude, Job Knowledge and Potential, and Attendance." And to complement this prerogative, the company, in the same section, is given the discretion to "exercise just and fair evaluation of such factors," meaning that the company is accorded a reasonable latitude to assign a corresponding weight to each factor. On the other hand, Sec. 2 merely defines or describes the factors or criteria mentioned in Sec. 1.

As couched, Sec. 1 is explicit in providing the criteria or factors for all employee movements. A reading of the other provisos would show the following: Sec. 3 on PROMOTIONS does not specifically mention any criterion or factor, logically implying that the factors expressly mentioned in Sec. 1 shall apply to promotional appointments; Sec. 4 on TRANSFERS, on the other hand, provides that the factors mentioned in Sec. 1 apply; Sec. 5 on LAY-OFFS provides the factors of seniority and needs of the company; while Sec. 6 on RECALLS TO WORK provides the sole factor of seniority. Given the way the provisions were couched relative to Sec. 1, it is clear to our mind, despite the seeming limited factors provided in Secs. 5 and 6, that the factors or criteria provided in Sec. 1,

as defined in Sec. 2, encompass and apply to all employee movements.

Alfredo's posture that the Sec. 1 criteria are to be viewed as a general standard and must be made to yield to those specifically provided in Sec. 5(c) is specious at best and does not commend itself for concurrence.

As aptly noted by the CA, the Sec. 5(c) "needs of the company" factor, if viewed by its lonesome self without linking it to the Sec. 1 criteria, would be a meaningless, if not unreasonable, standard. Worse still, it may well-nigh give MMPC a carte blanche and unchecked license to determine what the needs of the company would be relative to the lay-off, retrenchment, or retention of any employee. Such construal as espoused by Alfredo cannot be allowed for Sec. 1 expressly mandates the use of salient criteria to be considered in lay-off situation and other personnel movements. In all, there is really no irreconcilable conflict between Secs. 1 and 5; they can and ought to be harmonized and read in conjunction with each other.

The proper view, therefore, is that the Sec. 1 criteria qualify the factors of "seniority and needs of the company" in Sec. 5(c). Stated a bit differently, Sec. 5(c) should be understood in the light of Sec. 1 which, to stress, provides seniority, efficiency and attitude, job knowledge and potential, and attendance as among the factors that should guide the company in choosing the employees to be laid-off or kept. All other things being equal, a company would necessarily need to retain those who had rendered dedicated and highly efficient service and whose knowledge, attendance, and potential hew with company standards. Any other measure would be senseless in the business viewpoint. Accordingly, the merit rating used by MMPC based on Sec. 5 in conjunction with and as qualified by the factors provided under Sec. 1 is fair and reasonable, and, to be sure, well within the contemplation of the parties' CBA. In fact, Alfredo, shorn of the contention that the merit rating is against the CBA, has not shown any arbitrariness on the part of MMPC in the evaluation, selection, and retrenchment of employees.

We end this *ponencia* by taking stock that 60 of the first batch of 531 hourly employees retrenched in February 1998 challenged the legality of their retrenchment on the very same issue of arbitrariness in the implementation of the rating evaluation system. The labor arbiter, the NLRC, and effectively the CA were one in their ruling that the retrenchment program and the evaluation method used by MMPC passed the test of reasonableness and were arrived at in good faith; thus, the retrenchment was held legal and valid. In G.R. No. 155406, the Court found no reversible error in the CA judgment and dismissed the petition of the retrenched employees, thereby upholding the validity of retrenchment undertaken by respondent company.[20] The same result obtains in the instant petition.

WHEREFORE, the instant petition is hereby *DENIED* for lack of merit. Accordingly, the Decision dated November 18, 2004 of the CA and its Resolution of September 13, 2005 in CA-G.R. SP No. 84790 are hereby *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-09-2163. February 18, 2009]
(Formerly OCA IPI No. 07-2717-RTJ)

EDGARDO D. AREOLA (*a.k.a.* MOHAMMAD KAHDAFFY), *complainant, vs.* **JUDGE BAYANI Y. ILANO, Regional Trial Court, Branch 71, Antipolo City,** *respondent.*

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[20] *Rollo,* p. 281.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; JUDGES; ACTS OF A JUDGE IN HIS JUDICIAL CAPACITY ARE NOT SUBJECT TO DISCIPLINARY ACTION, NO MATTER HOW ERRONEOUS, AS LONG AS HE ACTS IN GOOD FAITH. — x x x As a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action, no matter how erroneous, as long as he acts in good faith. In the instant case, the administrative complaint was obviously resorted to when complainant failed to obtain the favorable action he wanted from the court. It must be stressed that the filing of an administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless issued or rendered with ill motive. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. In the instant case, there is no proof that the respondent Judge was moved by bad faith when he issued the alleged erroneous orders. Needless to state, bare allegations of bias and partiality will not suffice. There must be clear and convincing proof to overcome the presumption that the judge dispensed justice according to law and evidence, without fear or favor.

2. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; PERIOD WITHIN WHICH TO RESOLVE CASES, NOT OBSERVED IN CASE AT BAR. — [T]he Court can not gloss over the fact that respondent Judge was remiss in his duty for his failure to resolve the pending motion for reconsideration with dispatch. Under the Constitution, trial judges are given only ninety (90) days from the filing of the last pleading within which to resolve the matter at hand.

3. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES SHOULD ADMINISTER JUSTICE WITHOUT DELAY AND DISPOSE OF THE COURT'S BUSINESS PROMPTLY WITHIN THE PERIOD PRESCRIBED BY LAW; CASE AT BAR. — x x x Rule 3.05, Canon 3 of the Code of Judicial Conduct, likewise, enunciates that judges should administer justice without delay and dispose of the court's business promptly within the period prescribed by law. When respondent Judge took over the case,

the motion for reconsideration had already been long pending and several motions were filed for its urgent resolution. Respondent Judge acted on said motion only after five (5) months from the time the case was assigned to him. Unfortunately, respondent Judge's explanation on this matter is wanting as he failed to file any comment on the charges hurled against him.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; EVERY OFFICER OR EMPLOYEE IN THE JUDICIARY IS DUTY BOUND TO OBEY THE ORDERS AND PROCESSES OF THE COURT WITHOUT THE LEAST DELAY.— x x x The resolutions of the Court requiring Comment on an administrative complaint are not mere requests from the Court. They are not to be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them because it is their duty to preserve the integrity of the judiciary. The Court will not tolerate indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints. It must be stressed that every officer or employee in the Judiciary is duty bound to obey the orders and processes of this Court without the least delay and to exercise at all times a high degree of professionalism.

5. ID.; ID.; ID.; JUDGES; A JUDGE WHO DELIBERATELY AND CONTINUOUSLY FAILS AND REFUSES TO COMPLY WITH THE RESOLUTION OF THE COURT IS GUILTY OF GROSS MISCONDUCT AND INSUBORDINATION.— x x x [A] judge who deliberately and continuously fails and refuses to comply with the resolution of this Court is guilty of gross misconduct and insubordination. The respondent judge's consistent failure to comply with this Court's directives should, therefore, merit the appropriate sanction.

R E S O L U T I O N

NACHURA, *J.*:

This refers to the administrative complaint filed by Edgardo D. Areola (*a.k.a.* Mohammad Kahdaffy) against Judge Bayani

Y. Ilano, Regional Trial Court (RTC), Antipolo City, Branch 71, relative to Criminal Case No. 94-11519, entitled "*People of the Philippines v. Edgardo D. Areola, et al.,*" for Murder.

The antecedent facts which gave rise to the administrative case are as follows:

Complainant Edgardo D. Areola, Police Officer (PO)3 Manuel Bayaga and Antonio Bayaga were charged with Murder. The case, docketed as Criminal Case No. 94-11519, was raffled to the RTC, Branch 72, Antipolo City, with Judge Rogelio Angeles as Presiding Judge. When Judge Angeles retired, the case was transferred to Branch 73, presided over by Judge Mauricio Rivera.

On July 1, 2002, Judge Mauricio Rivera issued an order denying the Urgent Motion for Admission to Bail filed by accused Areola and the Motion for Bail filed by the two other accused. A motion for reconsideration was duly filed but then Judge Rivera voluntarily inhibited himself from handling the case. Hence, the case was transferred to RTC, Branch 74, under Judge Francisco Querubin.

On March 16, 2004, Judge Querubin issued an order granting the Motion for Bail of PO3 Manuel Bayaga and Antonio Bayaga only and fixed the bail at ₱100,000.00 each. On May 6, 2004, complainant filed a Manifestation stating therein that he should likewise be granted bail. Upon motion of the complainant, Judge Querubin recused himself so the case was assigned to Branch 71, presided over by Judge Bayani Y. Ilano, herein respondent.

Thereafter, Judge Ilano also expressed that he was inhibiting from the case but pursuant to a Memorandum from the Office of the Court Administrator, he was compelled to handle the case because the pairing judge of the heinous crimes court (Branch 74) had earlier inhibited from the case.

On April 11, 2006, complainant filed an Urgent Motion to Resolve Motion for Reconsideration of the Order of Judge Mauricio Rivera dated July 1, 2002 which denied the Urgent Motion for Admission to Bail.

On July 28, 2006, complainant filed a Second Urgent Motion to Resolve and to Grant Motion for Admission to Bail, and another Manifestation and Motion dated August 29, 2006 reiterating his prayer to be admitted to bail.

Meanwhile, on September 4, 2006, Judge Ilano issued an Order directing the transfer of the complainant from the Rizal Provincial Jail to the Antipolo City Jail upon an urgent *ex-parte* motion filed by the Provincial Warden on even date.

On September 15, 2006, Judge Ilano issued an Order denying Complainant's Motion for Reconsideration.

Feeling aggrieved, complainant filed the instant administrative complaint dated October 16, 2006 charging Judge Ilano with violations of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and the New Code of Judicial Conduct, gross incompetence, gross ignorance of the law, bias and partiality, frequent unjustified absences without leave, and habitual tardiness.

Respondent Judge was asked to Comment. As the records reveal, respondent Judge failed to file his Comment despite receipt of the 1st Indorsement on December 13, 2006 and the 1st Tracer on March 14, 2007. The show cause order[1] of the Court was also not complied with; thus, Judge Ilano was fined in the amount of ₱2,000.00 for such failure.[2]

The records also show that Judge Ilano passed away on March 25, 2008.

In the Memorandum dated January 8, 2009, the Office of the Court Administrator (OCA), clarified that the fact of death of the respondent during the pendency of the case does not render the case moot and academic. The Court retains its jurisdiction either to pronounce the respondent innocent of the charges or declare him guilty thereof. If innocent, respondent merits vindication of his name and integrity; if guilty, he deserves

[1] Resolution dated January 23, 2008.

[2] Resolution dated June 23, 2008.

to receive the correspondent censure and penalty proper and imposable under the situation.[3]

After a perusal of the records, we find complainant's charges against respondent Judge without basis. The orders which were adverse to the complainant pertained to the adjudicative function of respondent Judge. As a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action, no matter how erroneous, as long as he acts in good faith. In the instant case, the administrative complaint was obviously resorted to when complainant failed to obtain the favorable action he wanted from the court. It must be stressed that the filing of an administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless issued or rendered with ill motive. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned.[4] In the instant case, there is no proof that the respondent Judge was moved by bad faith when he issued the alleged erroneous orders. Needless to state, bare allegations of bias and partiality will not suffice. There must be clear and convincing proof to overcome the presumption that the judge dispensed justice according to law and evidence, without fear or favor.[5]

All these notwithstanding, the Court can not gloss over the fact that respondent Judge was remiss in his duty for his failure to resolve the pending motion for reconsideration with dispatch. Under the Constitution, trial judges are given only ninety (90) days from the filing of the last pleading within which to resolve the matter at hand.[6] Rule 3.05, Canon 3 of the Code of Judicial Conduct, likewise, enunciates that judges should administer justice without delay and dispose of the court's business promptly within the period

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[3] *Zarate v. Romanillos*, A.M. No. RTJ-94-1140, March 23, 1995, 242 SCRA 593, 605.

[4] *Pitney v. Judge Abrogar*, 461 Phil. 28, 34 (2003).

[5] *Causin v. Demecillo*, A.M. No. RTJ-04-1860, September 8, 2004, 437 SCRA 594, 606.

[6] *Abarquez v. Rebosura*, A.M. No. MTJ-94-986, January 28, 1998, 285 SCRA 109.

prescribed by law. When respondent Judge took over the case, the motion for reconsideration had already been long pending and several motions were filed for its urgent resolution. Respondent Judge acted on said motion only after five (5) months from the time the case was assigned to him. Unfortunately, respondent Judge's explanation on this matter is wanting as he failed to file any comment on the charges hurled against him.

As the records reveal, respondent Judge Ilano failed to file his comments on the administrative complaint against him despite receipt of the notices to do so on December 13, 2006 and March 14, 2007. The resolutions of the Court requiring Comment on an administrative complaint are not mere requests from the Court. They are not to be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them because it is their duty to preserve the integrity of the judiciary. The Court will not tolerate indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints.[7] It must be stressed that every officer or employee in the Judiciary is duty bound to obey the orders and processes of this Court without the least delay and to exercise at all times a high degree of professionalism.[8]

We have held that a judge who deliberately and continuously fails and refuses to comply with the resolution of this Court is guilty of gross misconduct and insubordination.[9] The respondent judge's consistent failure to comply with this Court's directives should, therefore, merit the appropriate sanction.

IN VIEW OF THE FOREGOING, Judge Bayani Y. Ilano is hereby *IMPOSED* a *FINE* of ₱20,000.00 chargeable to his retirement benefits.

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[7] *Palon, Jr. v. Vallarta*, A.M. No. MTJ-04-1530, March 7, 2007, 517 SCRA 624, 629.

[8] *Chan v. Castillo*, A.M. No. P-94-1055, November 25, 1994, 238 SCRA 359, 361.

[9] *Martinez v. Zoleta*, A.M. No. MTJ-94-904, May 22, 1996, 257 SCRA 49, 54.

SO ORDERED.

Quisumbing, Austria-Martinez** (Acting Chairperson), Chico-Nazario,* and *Peralta, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 159578. February 18, 2009]

ROGELIA DACLAG and ADELINO DACLAG (deceased), substituted by RODEL M. DACLAG, and ADRIAN M. DACLAG, *petitioners, vs.* **ELINO MACAHILIG, ADELA MACAHILIG, CONRADO MACAHILIG, LORENZA HABER, and BENITA DEL ROSARIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PRESCRIPTION OF ACTIONS; PRESCRIPTIVE PERIOD FOR THE RECONVEYANCE OF FRAUDULENTLY REGISTERED REAL PROPERTY IS TEN (10) YEARS RECKONED FROM THE DATE OF THE ISSUANCE OF THE CERTIFICATE OF TITLE. — In *Caro v. Court of Appeals*, we have explicitly held that "**the prescriptive period for the reconveyance of fraudulently registered real property is 10 years reckoned from the date of the issuance of the certificate of title** x x x."

2. ID.; CONTRACTS; VOID CONTRACTS; AN ACTION TO DECLARE THE INEXISTENCE OF A VOID CONTRACT DOES NOT PRESCRIBE. — The deed of sale executed by Maxima in favor of petitioners was null and void, since Maxima was not the owner of the land she sold to petitioners, and the one-

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* Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

** In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

half northern portion of such land was owned by respondents. Being an absolute nullity, the deed is subject to attack anytime, in accordance with Article 1410 of the Civil Code that an action to declare the inexistence of a void contract does not prescribe. Likewise, we have consistently ruled that when there is a showing of such illegality, the property registered is deemed to be simply held in trust for the real owner by the person in whose name it is registered, and the former then has the right to sue for the reconveyance of the property. An action for reconveyance based on a void contract is imprescriptible. As long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner. In this case, title to the property is in the name of petitioner Rogelia; thus, the trial court correctly ordered the reconveyance of the subject land to respondents.

3. ID.; PROPERTY; POSSESSION; POSSESSION IN GOOD FAITH; CEASES FROM THE MOMENT DEFECTS IN THE TITLE ARE MADE KNOWN TO THE POSSESSORS BY EXTRANEOUS EVIDENCE OR BY SUIT FOR RECOVERY OF THE PROPERTY BY THE TRUE OWNER. — Article 528 of the Civil Code provides that possession acquired in good faith does not lose this character, except in a case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully. Possession in good faith ceases from the moment defects in the title are made known to the possessors, by extraneous evidence or by suit for recovery of the property by the true owner. Whatever may be the cause or the fact from which it can be deduced that the possessor has knowledge of the defects of his title or mode of acquisition, it must be considered sufficient to show bad faith. Such interruption takes place upon service of summons.

4. ID.; ID.; ID.; ID.; A POSSESSOR IN GOOD FAITH IS ENTITLED TO THE FRUITS ONLY SO LONG AS HIS POSSESSION IS NOT LEGALLY INTERRUPTED; CASE AT BAR. — Article 544 of the same Code provides that a possessor in good faith is entitled to the fruits only so long as his possession is not legally interrupted. Records show that petitioners received a summons together with respondents' complaint on August 5, 1991; thus, petitioners' good faith ceased on the day they received the summons. Consequently, petitioners should pay

respondents 10 cavans of *palay* per annum beginning August 5, 1991 instead of 1984.

APPEARANCES OF COUNSEL

Inocencio-Igoy & Associates Law Office for petitioners.
Adolfo M. Iligan for respondents.

R E S O L U T I O N

AUSTRIA-MARTINEZ,* *J.*:

Before us is petitioners' Motion for Reconsideration of our Decision dated July 28, 2008 where we affirmed the Decision dated October 17, 2001 and the Resolution dated August 7, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 48498.

Records show that while the land was registered in the name of petitioner Rogelia in 1984, respondents' complaint for reconveyance was filed in 1991, which was within the 10-year prescriptive period.

We ruled that since petitioners bought the property when it was still an unregistered land, the defense of having purchased the property in good faith is unavailing. We affirmed the Regional Trial Court (RTC) in finding that petitioners should pay respondents their corresponding share in the produce of the subject land from the time they were deprived thereof until the possession is restored to them.

In their Motion for Reconsideration, petitioners contend that the 10-year period for reconveyance is applicable if the action is based on an implied or a constructive trust; that since respondents' action for reconveyance was based on fraud, the action must be filed within four years from the discovery of the fraud, citing *Gerona v. De Guzman*,[1] which was reiterated in *Balbin v. Medalla*.[2]

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* In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 563 dated February 12, 2009.

[1] G.R. No. L-4258, January 18, 1951, 11 SCRA 153.

[2] 195 Phil. 475 (1981).

We do not agree.

In *Caro v. Court of Appeals*,[3] we have explicitly held that "**the prescriptive period for the reconveyance of fraudulently registered real property is 10 years reckoned from the date of the issuance of the certificate of title** x x x."[4]

However, notwithstanding petitioners' unmeritorious argument, the Court deems it necessary to make certain clarifications. We have earlier ruled that respondents' action for reconveyance had not prescribed, since it was filed within the 10-year prescriptive period.

However, a review of the factual antecedents of the case shows that respondents' action for reconveyance was not even subject to prescription.

The deed of sale executed by Maxima in favor of petitioners was null and void, since Maxima was not the owner of the land she sold to petitioners, and the one-half northern portion of such land was owned by respondents. Being an absolute nullity, the deed is subject to attack anytime, in accordance with Article 1410 of the Civil Code that an action to declare the inexistence of a void contract does not prescribe. Likewise, we have consistently ruled that when there is a showing of such illegality, the property registered is deemed to be simply held in trust for the real owner by the person in whose name it is registered, and the former then has the right to sue for the reconveyance of the property.[5] An action for reconveyance based on a void contract is imprescriptible.[6] As long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner.[7]

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[3] G.R. No. 76148, December 20, 1989, 180 SCRA 401.

[4] *Id.* at 407.

[5] *Salomon v. Intermediate Appellate Court*, G.R. No. 70263, May 14, 1990, 185 SCRA 352, 363.

[6] *Id., Lacsamana v. Court of Appeals*, 351 Phil. 526, 534 (1998).

[7] *Id.*, citing *Baranda v. Baranda*, 234 Phil. 64, 77 (1987).

In this case, title to the property is in the name of petitioner Rogelia; thus, the trial court correctly ordered the reconveyance of the subject land to respondents.

Petitioners next contend that they are possessors in good faith, thus, the award of damages should not have been imposed. They further contend that under Article 544, a possessor in good faith is entitled to the fruits received before the possession is legally interrupted; thus, if indeed petitioners are jointly and severally liable to respondents for the produce of the subject land, the liability should be reckoned only for 1991 and not 1984.

We find partial merit in this argument.

Article 528 of the Civil Code provides that possession acquired in good faith does not lose this character, except in a case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully. Possession in good faith ceases from the moment defects in the title are made known to the possessors, by extraneous evidence or by suit for recovery of the property by the true owner. Whatever may be the cause or the fact from which it can be deduced that the possessor has knowledge of the defects of his title or mode of acquisition, it must be considered sufficient to show bad faith.[8] Such interruption takes place upon service of summons.[9]

Article 544 of the same Code provides that a possessor in good faith is entitled to the fruits only so long as his possession is not legally interrupted. Records show that petitioners received a summons together with respondents' complaint on August 5, 1991;[10] thus, petitioners' good faith ceased on the day they received the summons. Consequently, petitioners should pay respondents 10 cavans of *palay* per annum beginning August 5, 1991 instead of 1984.

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[8] *Wong v. Carpio*, G.R. No. 50264, October 21, 1991, 203 SCRA 118, 125.

[9] *Id*., citing *Manotok Realty, Inc. v. Tecson*, G.R. No. L-47475, August 19, 1988, 164 SCRA 587, 592, citing *Mindanao Academy, Inc. v. Yap*, 121 Phil. 204, 210 (1965).

[10] Records, pp. 5-6.

Finally, petitioner would like this Court to look into the finding of the RTC that "since Maxima died in October 1993, whatever charges and claims petitioners may recover from her expired with her"; and that the proper person to be held liable for damages to be awarded to respondents should be Maxima Divison or her estate, since she misrepresented herself to be the true owner of the subject land.

We are not persuaded.

Notably, petitioners never raised this issue in their appellants' brief or in their motion for reconsideration filed before the CA. In fact, they never raised this matter before us when they filed their petition for review. Thus, petitioners cannot raise the same in this motion for reconsideration without offending the basic rules of fair play, justice and due process, specially since Maxima was not substituted at all by her heirs after the promulgation of the RTC Decision.

WHEREFORE, petitioners' Motion for Reconsideration is *PARTLY GRANTED*. The Decision of the Court of Appeals dated July 28, 2008 is *MODIFIED* only with respect to prescription as discussed in the text of herein Resolution, and the dispositive portion of the Decision is *MODIFIED* to the effect that petitioners are ordered to pay respondents 10 cavans of *palay* per annum beginning August 5, 1991 instead of 1984.

SO ORDERED.

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

[**] In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 564 dated February 12, 2009.

[***] Carpio, *J.* designated in lieu of Reyes, *J.*, (ret.) per Raffle dated February 11, 2009.

SECOND DIVISION

[G.R. No. 165836. February 18, 2009]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **ADELA SIA and ROBERT NGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELUCIDATED; REQUISITES.— The doctrine of *res judicata* as enunciated in Section 47, Rule 39 of the Rules of Court, reads: SEC. 47. *Effect of judgments or final orders*.– The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows: x x x (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. For the preclusive effect of *res judicata* to be enforced, however, the following requisites must be present: (1) the judgment or order sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the first case must be a judgment on the merits; and (4) there must

be between the first and second action, identity of parties, subject matter and causes of action.

2. ID.; ID.; ESTOPPEL; A BAR AGAINST ANY CLAIMS OF LACK OF JURISDICTION. — In defending their title over the subject property, respondents insist that the decision in Civil Case No. 84-27347 is null and void for failure to implead them as indispensable parties. However, these arguments adduced by respondents have already been raised, passed upon, and rejected with finality in CA-G.R. SP No. 22889 and CA-G.R. SP No. 25819. In CA-G.R. SP No. 22889, the Court of Appeals ruled in this wise: In that Civil Case No. 84-27347, defendant Apolonia S. Ngo filed her answer to the complaint. She thereby submitted to the jurisdiction of the respondent court, she cannot now alleged (sic) in the petition at bar that the court *a quo* did not acquire jurisdiction over her person. If petitioner Apolonia S. Ngo is indeed married to Robert Ngo, she kept silent about her marital status during the entire proceedings in Civil Case No. 84-27347. Petitioner Apolonia S. Ngo could have assailed from the beginning the lower court's jurisdiction over her person on the ground that her husband Robert Ngo was not impleaded and could have thus invoked what she now claims that she cannot be sued for not being joined with her husband, Robert Ngo. This Court frowns upon petitioners' omission in not disclosing to the court below their status as husband and wife. On the other hand, Robert Ngo, petitioner herein, as husband of Apolonia S. Ngo, cannot disclaim knowledge about the fact that his wife is a defendant in Civil Case No. 84-27347. It is, therefore, clear that petitioner Apolonia S. Ngo is now estopped from assailing the jurisdiction of the Regional Trial Court of Manila in Civil Case No. 84-27347 after she had voluntarily submitted herself to its jurisdiction (*Tejones vs. Geronilla*, 159 SCRA 100). Petitioners must be considered to have accepted the lower court's jurisdiction. Estoppel is a bar against any claims of lack of jurisdiction. (*Balais vs. Balais*, 159 SCRA 37).

3. ID.; ID.; JUDGMENTS; *RES JUDICATA*; TWO ASPECTS THEREOF, EXPLAINED. — In the present case, the first three elements of *res judicata* are present. As to the fourth element, it is important to note that the doctrine of *res judicata* has two aspects: *first*, "bar by prior judgment" which is provided in Rule 39, Section 47 (b) of the Rules of Court and *second*, "conclusiveness of judgment" which is provided in Section 47

(c) of the same Rule. There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.

4. ID.; ID.; ID.; ID.; ID.; "CONCLUSIVENESS OF JUDGMENT"; PRESENT IN CASE AT BAR.— In this case, conclusiveness of judgment exists because respondents again seek to enforce their right and title over the same subject matter, the litigated property, basing their claim on the nullity of the judgment in Civil Case No. 84-27347, for failure to implead them therein as indispensable parties, which had been overruled by final and executory judgments. The same question cannot be raised again even in a different proceeding involving the same parties.

5. CIVIL LAW; CONTRACTS; REAL ESTATE MORTGAGE; BAD FAITH ABSENT IN CASE AT BAR.— PNB acted in good faith when it approved the loan application of the Galicias. We note that at the time the Galicias applied for a loan with PNB on November 29, 1990, the decision in Civil Case No. 84-27347 was already final and executory. In fact, the trial court already issued a writ of execution on August 16, 1990 to implement its decision. Moreover, the respondents themselves alleged in their pleadings that the documents assessed by the bank in granting the loan application of the Galicias were the Contract to Sell between MIDCOM and the Galicias dated August 20, 1984 and the September 26, 1990 Order of the trial court in Civil Case No. 84-27347 categorically ordering the Register of Deeds of Manila to cancel the title of Apolonia Sia and all persons claiming rights under her and to issue a new title in favor of the Galicias. Furnished with a copy of the September 26, 1990 Order, PNB

can reasonably conclude that it has no more reason to doubt that the Galicias are the recognized owners of the subject property because no less than the court ordered the Register of Deeds of Manila to issue a title in their names. As a gesture of utmost precaution, PNB even waited for the title in favor of the Galicias to be issued before it executed and signed the Contract of Real Estate Mortgage. For this reason, PNB cannot be considered a mortgagee in bad faith.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Cecilio V. Suarez for petitioner Galicia.
Cabug-os Hipolito Ridao Law Offices for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks to set aside the Decision[1] dated July 31, 2003 and the Resolution[2] dated October 28, 2004 of the Court of Appeals in CA-G.R. CV No. 49806.

The antecedents of the case, as culled from the records, are:

Midcom Interline Development Corporation (MIDCOM) was the registered owner of a 349-square meter lot with a ten-door apartment located at the corner of Alvarez and Oroquieta Streets in Sta. Cruz, Manila, and covered by Transfer Certificate of Title (TCT) No. 156156.[3] On August 20, 1984, MIDCOM signed a Contract to Sell[4] the property to the spouses Felicisimo and Myrna Galicia (Galicias) for the amount of ₱480,000, with the agreement that ₱150,000 be given upon the execution of the contract and the remaining ₱330,000 be paid in three monthly

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[1] *Rollo*, pp. 69-86. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Josefina Guevara-Salonga and Arturo D. Brion (now a member of this Court), concurring.

[2] *Id.* at 87-90.

[3] Exhibit "D", folder of exhibits, p. 6.

[4] Exhibit "K", *id.* at 34-35.

installments. Out of the purchase price of ₱480,000, the Galicias left an unpaid balance of ₱70,000.

The subject property was again sold by MIDCOM to Apolonia Sia Ngo and respondent Adela Sia for ₱630,000, as evidenced by a Deed of Absolute Sale[5] dated October 1, 1984. Thereafter, on October 9, 1984, the Galicias received a letter[6] that MIDCOM had already rescinded their Contract to Sell.[7]

On October 22, 1984, the Galicias filed before the Regional Trial Court (RTC) of Manila, Branch 29, a complaint[8] against MIDCOM and its president, Miguel G. Say, Jr., Apolonia Sia Ngo, and the Register of Deeds of Manila for Specific Performance and Damages with Prayer for Injunction. The complaint, docketed as Civil Case No. 84-27347, sought to compel MIDCOM to execute a Deed of Sale in the Galicias' favor upon payment of the balance of the purchase price. The Galicias also caused the annotation of a notice of *lis pendens* at the back of TCT No. 156156 on February 12, 1985.[9]

On February 26, 1985, TCT No. 156156 registered to MIDCOM was cancelled, and TCT No. 164726[10] was issued in the names of "Apolonia S. Ngo, married to Robert Ngo, and Adela Sia," despite a temporary restraining order issued by the RTC of Manila, Branch 29, enjoining the registration of the Deed of Sale and the issuance of a new title on the property.

On October 7, 1986, the RTC of Manila, Branch 29 decided Civil Case No. 84-27347 in favor of the Galicias, as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs against the defendants:

(1) Ordering defendant Midcom thru Miguel Say to execute the Deed of Absolute Sale in favor of plaintiffs upon payment

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[5] Exhibit "A", *id.* at 1-2.

[6] Exhibit "L", *id.* at 36.

[7] CA *rollo*, p. 117.

[8] Records, pp. 33-40.

[9] Folder of exhibits, p. 7.

[10] Exhibit "E", folder of exhibits, p. 9.

of the balance of the purchase price of the land in the amount of ₱70,000.00, and to deliver the duplicate owner's copy of the title over the land in question to the plaintiffs as well as such other documents necessary for the transfer or conveyance thereof to the plaintiffs;

(2) Ordering defendants Apolonia Ngo and all other persons claiming rights under them to turn over and deliver the duplicate original of the title over the lot in dispute to plaintiffs and to convey the property to them;

(3) Ordering defendant Register of Deeds of Manila to issue the title in the name of plaintiffs over the premises in question and to cancel the title in the name of Apolonia Ngo and other persons;

(4) Declaring the adverse claim of Apolonia Ngo as void and of no effect;

(5) Ordering the Register of [Deeds of] Manila or its deputy to cancel the adverse claim of Apolonia Ngo as appearing in the title of the lot in question;

(6) Ordering the defendants Midcom thru Miguel Say and Apolonia Ngo to pay jointly and severally the plaintiffs the sum of ₱100,000.00 as moral damages, and ₱50,000.00 as exemplary damages;

(7) Ordering the defendants Midcom, Miguel Say and Apolonia Ngo to pay jointly and severally the plaintiffs the sum of ₱30,000.00 attorney's fees;

(8) Respondents Miguel Say, Apolonia Ngo and the Register of Deeds of Manila are hereby declared in contempt of court and are hereby fined ₱100.00 each with subsidiary imprisonment in case of insolvency for violation of the restraining order;

(9) Ordering defendants to pay the costs.

SO ORDERED.[11]

Upon finality of the said decision, a writ of execution[12] was issued by the RTC of Manila, Branch 29 on August 16, 1990.

[11] Records, pp. 151-152.

[12] *Id.* at 153-154.

TCT No. 164726 was cancelled and TCT No. 195378[13] in the name of the Galicias was issued by the Register of Deeds of Manila on January 22, 1991.

On January 23, 1991, the Galicias and petitioner Philippine National Bank (PNB) signed a contract of real estate mortgage[14] over the property to secure a loan for ₱5,000,000 which the Galicias had taken.

On February 29, 1991, Apolonia Ngo and respondents Adela Sia and Robert Ngo filed with the Court of Appeals a petition[15] for *certiorari* and prohibition praying that the decision in Civil Case No. 84-27347 be declared void on the ground of lack of jurisdiction, for failure to implead therein the respondents Adela Sia and Robert Ngo as indispensable parties. The petition was docketed as CA-G.R. SP No. 22889. Being insufficient in form and substance, however, the petition was denied due course on March 11, 1991.[16] Apolonia Ngo and respondents' first and second motions for reconsideration were likewise denied by the appellate court in its Resolutions dated May 31, 1991 and June 14, 1991.[17]

Thereafter, on August 2, 1991, respondents Adela Sia and Robert Ngo, claiming that their title to the subject property was beclouded by the decision and writ issued in Civil Case No. 84-27347, and joining an unwilling Apolonia as compulsory plaintiff, instituted a complaint[18] for quieting of title and/or reconveyance, damages, and annulment of judgment with prayer for restraining order and/or preliminary injunction before the RTC of Manila, Branch 3 against the Galicias, the City Sheriff of Manila, the Sheriff of Branch 29 of the RTC of Manila, the Register of Deeds, and MIDCOM. The complaint, docketed

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[13] Exhibit "F", folder of exhibits, p. 10.

[14] Exhibit "M", *id.* at 37-38.

[15] *Rollo,* pp. 139-147.

[16] *Id.* at 148-150.

[17] *Id.* at 151-154.

[18] Records, pp. 1-13.

as Civil Case No. 91-58130, was later amended by deleting therein the action for annulment of judgment.

On August 27, 1991, respondent Adela Sia, joining respondent Robert Ngo and his wife, Apolonia Ngo as compulsory petitioners, also filed a petition[19] for annulment of judgment before the Court of Appeals. The petition, docketed as CA-G.R. SP No. 25819, likewise sought the nullification of the same decision and writ of execution issued in Civil Case No. 84-27347 allegedly for lack of jurisdiction for non-inclusion of Adela Sia who was an indispensable party. However, the Court of Appeals dismissed the petition for failure to state a cause of action.[20] The appellate court held that respondent Adela Sia had no right to the subject property at the time the complaint in Civil Case No. 84-27347 was filed since her claim as registered co-owner of the property arose only during the pendency of the case. Respondent Adela Sia moved for reconsideration, but it was denied in the November 27, 1991 Resolution[21] of the Court of Appeals. Not dissuaded by the dismissal, she elevated the case to this Court via petition for review, docketed as G.R. No. 103054.[22] This Court, however, also denied the petition, as well as the motions for reconsideration, and ordered that an entry of judgment be made in due course.[23]

The complaint lodged before Branch 3 of the RTC of Manila and docketed as Civil Case No. 91-58130 was amended for the second time by impleading PNB as a party defendant for having accepted the subject property as one of the collaterals in the loan it extended to the Galicias. Respondents claim that the mortgage of the land to PNB was in bad faith since PNB accepted the subject property as collateral to the loan obtained by the Galicias when the title of the property was still in the respondents' names. They claim that they are entitled to have TCT No. 164726 restored and reinstated and to have all the

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[19] Folder of exhibits, pp. 99-106.

[20] *Rollo*, pp. 172-178.

[21] Folder of exhibits, pp. 133-138.

[22] *Id.* at 57-93.

[23] *Id.* at 96-97, 160.

entries and annotations of adverse claim, mortgage lien, and notice of *lis pendens* on their title removed so as to quiet their title thereto.

On August 29, 1994, the RTC of Manila, Branch 3, rendered judgment in Civil Case No. 91-58130, holding that the action is barred by *res judicata* since the issues raised therein had already been answered with finality by the decision in Civil Case No. 84-27347. However, the trial court held that respondents are entitled to recover from MIDCOM the purchase price of ₱630,000 plus legal rate of interest from October 1, 1984, and attorney's fees in the amount of ₱20,000.[24] The dispositive portion of the decision states:

WHEREFORE, judgment is rendered:

1. Ordering MIDCOM Corporation to pay plaintiff the sum of ₱630,000.00 plus legal rate of interest from October 1, 1984 and attorney's fees in the amount of ₱20,000.00.

2. Dismissing plaintiffs' complaint against defendants Felicisimo Galicia and Myrna Galicia.

3. Dismissing plaintiffs' complaint against PNB.

As to counterclaim:

4. Plaintiffs are hereby ordered jointly and solidarily to pay defendants Felicisimo and Myrna Galicia the sum of ₱20,000.00 as attorney's fees plus costs of litigation.

5. Plaintiffs are hereby ordered jointly and solidarily to pay defendant PNB the sum of ₱20,000.00 as attorney's fees plus cost of litigation.

All other claims and counterclaims are hereby dismissed.

SO ORDERED.[25]

On March 8, 1995,[26] the trial court denied respondents' motion for reconsideration. The respondents elevated the case before the Court of Appeals, where it was docketed as CA-G.R. CV No. 49806.

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[24] *Rollo*, pp. 226-232.

[25] *Id.* at 232.

[26] *Id.* at 233.

On July 31, 2003, the Court of Appeals reversed the ruling of the court *a quo* as follows:

> WHEREFORE, the appeal is **GRANTED** and the assailed Decision is **REVERSED** and **SET ASIDE**. In its stead[,] judgment is rendered:
>
> 1. Declaring Apolonia S. Ngo, married to Robert Ngo, and Adela Sia as co-owners of the litigated lot and its improvements;
>
> 2. Ordering the Register of Deeds of Manila to recall and cancel TCT No. 195378 in the names of the Galicias and to restore and reinstate TCT No. 164726 in the names of Apolonia S. Ngo, married to Robert Ngo, and Adela Sia; and
>
> 3. Ordering the Register of Deeds of Manila to cancel and remove all pertinent notices/annotations of adverse claim, *lis pendens*, mortgage and liens on TCT No. 164726.
>
> SO ORDERED.[27]

The appellate court held that what was entered into by MIDCOM and the Galicias was a mere contract to sell. Accordingly, MIDCOM remained the owner of the disputed property and could unilaterally rescind the contract to sell when the Galicias failed to pay the balance of the purchase price. The appellate court likewise held that for failure to implead an indispensable party, the judgment in Civil Case No. 84-27347 cannot bind respondent Adela Sia, who was a co-owner holding a one-half pro-indiviso share of the property.

Further, the Court of Appeals held that PNB was a mortgagee in bad faith. It noted that while the Real Estate Mortgage and Credit Agreement was entered into only on January 23, 1991 or a day after TCT No. 195378 in the name of the Galicias was issued on January 22, 1991, the loan application offering the subject property as collateral was dated November 29, 1990 and the PNB Rizal Avenue branch recommended its approval on December 14, 1990. It held that PNB committed lapses when it acted on the offer of the Galicias to secure their loan with a mortgage on a property covered by TCT No. 195378, since said title was still inexistent at the time, having been issued

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[27] *Id.* at 85-86.

only on January 22, 1991. If PNB had indeed conducted an investigation as it claimed it did, then PNB would have discovered this fact.

PNB[28] and the Galicias[29] separately moved for reconsideration of the Court of Appeals decision, but the Court of Appeals denied their motions in its assailed Resolution dated October 28, 2004.[30]

Hence, the instant petition where PNB alleges that the Court of Appeals committed serious error in

I.

…ORDERING THE [REGISTER OF DEEDS] OF MANILA TO RECALL AND CANCEL TCT NO. 195378 IN THE NAMES OF THE GALICIAS AND TO RESTORE AND REINSTATE TCT NO. 164726 IN THE NAMES OF APOLONIA S. NGO, MARRIED TO ROBERT NGO, AND ADELA SIA.

II.

…RULING THAT PETITIONER PNB IS A MORTGAGEE IN BAD FAITH.

III.

…ORDERING THE CANCELLATION AND REMOVAL OF ALL PERTINENT NOTICES/ANNOTATIONS OF ADVERSE CLAIM, *LIS PENDENS*, MORTGAGE AND LIENS ON TCT NO. 164726.[31]

Essentially, the issues for our resolution are: (1) whether Civil Case No. 91-58130 is barred by *res judicata;* and (2) whether PNB is a mortgagee in bad faith.

PNB argues that *res judicata* applies in the present case. It maintains that the facts in the action for quieting of title (Civil Case No. 91-58130) are also the very same facts evaluated in the proceedings before the Manila RTC, Branch 29 in Civil Case No. 84-27347, CA-G.R. SP No. 22889 and CA-G.R. SP No. 25819

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[28] CA *rollo*, pp. 178-190.

[29] *Id.* at 194-200.

[30] *Rollo*, pp. 89-90.

[31] *Id.* at 382.

which involve the same parties, same issues, and which have already been resolved with finality by the courts.[32]

Respondents counter that the vital elements of *res judicata* are not present because Adela Sia, an indispensable party, was not impleaded as party defendant in Civil Case No. 84-27347.[33]

After careful review, we find merit in PNB's petition.

The doctrine of *res judicata* as enunciated in Section 47, Rule 39 of the Rules of Court, reads:

> SEC. 47. *Effect of judgments or final orders.*— The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> xxx xxx xxx
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[34]

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[32] *Id.* at 386.

[33] *Id.* at 323-324.

[34] *Republic v. Yu*, G.R. No. 157557, March 10, 2006, 484 SCRA 416, 420.

For the preclusive effect of *res judicata* to be enforced, however, the following requisites must be present: (1) the judgment or order sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the first case must be a judgment on the merits; and (4) there must be between the first and second action, identity of parties, subject matter and causes of action.[35]

In defending their title over the subject property, respondents insist that the decision in Civil Case No. 84-27347 is null and void for failure to implead them as indispensable parties. However, these arguments adduced by respondents have already been raised, passed upon, and rejected with finality in CA-G.R. SP No. 22889 and CA-G.R. SP No. 25819.

In CA-G.R. SP No. 22889, the Court of Appeals ruled in this wise:

> In that Civil Case No. 84-27347, defendant Apolonia S. Ngo filed her answer to the complaint. She thereby submitted to the jurisdiction of the respondent court, she cannot now alleged (sic) in the petition at bar that the court *a quo* did not acquire jurisdiction over her person. If petitioner Apolonia S. Ngo is indeed married to Robert Ngo, she kept silent about her marital status during the entire proceedings in Civil Case No. 84-27347. Petitioner Apolonia S. Ngo could have assailed from the beginning the lower court's jurisdiction over her person on the ground that her husband Robert Ngo was not impleaded and could have thus invoked what she now claims that she cannot be sued for not being joined with her husband, Robert Ngo. This Court frowns upon petitioners' omission in not disclosing to the court below their status as husband and wife. On the other hand, Robert Ngo, petitioner herein, as husband of Apolonia S. Ngo, cannot disclaim knowledge about the fact that his wife is a defendant in Civil Case No. 84-27347. It is, therefore, clear that petitioner Apolonia S. Ngo is now estopped from assailing the jurisdiction of the Regional Trial Court of Manila in Civil Case No. 84-27347 after she had voluntarily submitted herself to its jurisdiction (*Tejones vs. Geronilla*, 159 SCRA 100). Petitioners must be considered to have accepted the lower court's jurisdiction. Estoppel is a bar

[35] *Heirs of Abalos v. Bucal, et al.*, G.R. No. 156224, February 19, 2008,546 SCRA 252, 272.

against any claims of lack of jurisdiction. (*Balais vs. Balais*, 159 SCRA 37).

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In the case at bar, petitioner Apolonia S. Ngo lost her right to appeal by failing to avail of it seasonably. To remedy that loss, the petitioners have now resorted to the extraordinary remedy of *certiorari* as a mode of obtaining reversal of the judgment from which they failed to appeal. But since the decision in Civil Case No. 84-27347 has become final, it has gone beyond the reach of any court to modify in any substantive aspect. . . .[36]

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In CA-G.R. SP No. 25819, the Court of Appeals held that:

What is important to note is that after due trial, the trial court found the property in question was the subject of a contract to sell on August 20, 1984…entered into by [the Galicias] and defendant Midcom through its President, Miguel Say, Jr. The [Galicias] made a down payment of ₱410,000.00, with a balance of ₱70,000.00 payable on October 20, 1984.

Upon receipt of information that defendant Miguel Say, Jr. was selling the property in question to another, the [Galicias] executed an Affidavit of Adverse Claim on October 2, 1984 and annotated the same on the same date in TCT [No.] 156156.… The trial court declared the unilateral rescission of the contract to sell executed by defendant Midcom and Say dated October 3, 1984 in favor of the [Galicias] null and void. The trial court likewise declared Apolonia S. Ngo as a purchaser in bad faith when she purchased the property in question, being aware of facts that ought to induce her to inquire into the status of said property. . . .

Considering that the validity of the contract to sell executed by defendant Midcom through Miguel Say, Jr. in favor of [the Galicias] was upheld and the deed of sale executed by defendants Midcom thru Miguel Say, Jr. in favor of Apolonia Ngo, was in effect declared null and void, TCT No. 164726 of the Registry of Deeds of Manila issued to Apolonia Ngo and her alleged co-owner Adela Sia pursuant to the invalidated deed of sale and in violation of the restraining order issued by the respondent court on October 31, 1984 did not produce any right or title in favor of the apparent registered owners of the property in question, and for which reason the respondent court correctly ordered

[36] *Rollo,* pp. 149-150.

Apolonia Ngo and all persons claiming right under said TCT No. 164726 to turn over and deliver the duplicate owner's copy thereof to plaintiffs and to convey the subject property to them.

There is reason to believe that [the Galicias] could not at the time they filed the complaint have included petitioner Adela Sia as one of the defendants in Civil Case No. 84-27347 before the respondent Regional Trial Court of Manila on the ground that said case was principally to ask the court to compel Midcom to execute a deed of sale in favor of respondents Galicia and to deliver its owner's copy of the title to the latter, and incidentally to cancel the adverse claim annotated by Apolonia Ngo on the title of Midcom.

Upon the other hand, an adverse claim of plaintiff-spouses Galicia and notice of *lis pendens* having been annotated on the TCT of defendant Midcom of which petitioner Adela Sia had constructive, if not actual notice, said petitioner who claims an interest in the property under litigation should have intervened in the action (Civil Case No. 84-27347) brought by the spouses Galicia against Midcom, Say, Apolonia Ngo, and the Register of Deeds of Manila. Having failed to intervene, the judgment rendered in said case is binding on her. . . .

Having acquired no right or title to the property in dispute, petitioner [Adela] Sia has no cause of action to ask for the annulment of the judgment of the respondent Regional Trial Court in Civil Case No. 84-27347.[37]

xxx xxx xxx

In denying Adela Sia's motion for reconsideration in CA-G.R. SP No. 25819, the Court of Appeals in its November 27, 1991 Resolution reiterated its earlier ruling that she is **not** an indispensable party in the proceedings in Civil Case No. 84-27347 before Branch 29 of the Manila RTC. The appellate court held:

xxx xxx xxx

In the third ground[, respondent Adela], claiming to be an indispensable party, argues that she was deprived of her property without due process of law.

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[37] *Id.* at 176-177.

We cannot sustain [respondent's] claim. Considering the manner how she and Apolonia Ngo obtained TCT No. 164726 of the Registry of Deeds of Manila in violation of the restraining order issued by the trial court, and the nature of the complaint filed by the spouses Galicia against Midcom [Interline] Development Corporation, *et al.,* petitioner could not insist that she is an indispensable party therein.

Moreover, as we have said in the decision sought to be reconsidered that an adverse claim and notice of *lis pendens* having been annotated in the TCT of defendant Midcom, of which she has notice, she should have intervened in said action. Additionally, she and Apolonia Ngo having the same interest in the land in litigation through the alleged sale to them by Midcom, the judgment against Apolonia is binding on her.[38]

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As mentioned above, this Court denied the petition for review filed in CA-G.R. SP No. 25819 and ordered that an entry of judgment be made in the case. There being no appeals made in CA-G.R. SP No. 22889, the latter has also attained finality.

In the present case, the first three elements of *res judicata* are present. As to the fourth element, it is important to note that the doctrine of *res judicata* has two aspects: *first*, "bar by prior judgment" which is provided in Rule 39, Section 47 (b) of the Rules of Court and *second*, "conclusiveness of judgment" which is provided in Section 47 (c) of the same Rule.

There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future

[38] Folder of exhibits, p. 137.

case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.[39]

In this case, conclusiveness of judgment exists because respondents again seek to enforce their right and title over the same subject matter, the litigated property, basing their claim on the nullity of the judgment in Civil Case No. 84-27347, for failure to implead them therein as indispensable parties, which had been overruled by final and executory judgments. The same question cannot be raised again even in a different proceeding involving the same parties.

Anent the issue that PNB is a mortgagee in bad faith, PNB claims it was diligent in processing the loan application of the Galicias and that respondents failed to dispute that prior to the signing of the Real Estate Mortgage Agreement on January 23, 1991, it conducted a credit investigation on the Galicias as well as the parcels of land being offered as collaterals. PNB also contends that the fact that it conducted its credit investigation prior to the issuance of TCT No. 195378 in the name of the Galicias should not be taken against it. It argues that what was material to the grant of the loan was that the Galicias were able to secure a copy of the TCT issued to them on January 22, 1991. PNB contends that without a copy of TCT No. 195378, the loan application would not have been granted.[40]

Respondents, on the other hand, argue that PNB is a mortgagee in bad faith as it closed its eyes to the infirmity of the Galicias' collateral just to accommodate them.[41]

We are of the opinion and so hold that PNB acted in good faith when it approved the loan application of the Galicias. We note that at the time the Galicias applied for a loan with PNB on November 29, 1990,[42] the decision in Civil Case No. 84-27347 was already

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[39] *Republic v. Yu*, *supra* note 34, at 422; *Heirs of Rolando N. Abadilla v. Galarosa*, G.R. No. 149041, July 12, 2006, 494 SCRA 675, 688-689.

[40] *Rollo*, p. 63.

[41] *Id.* at 326.

[42] Folder of exhibits, pp. 42, 50.

final and executory. In fact, the trial court already issued a writ of execution on August 16, 1990 to implement its decision. Moreover, the respondents themselves alleged in their pleadings that the documents assessed by the bank in granting the loan application of the Galicias were the Contract to Sell between MIDCOM and the Galicias dated August 20, 1984 and the September 26, 1990 Order[43] of the trial court in Civil Case No. 84-27347 categorically ordering the Register of Deeds of Manila to cancel the title of Apolonia Sia and all persons claiming rights under her and to issue a new title in favor of the Galicias.[44] Furnished with a copy of the September 26, 1990 Order, PNB can reasonably conclude that it has no more reason to doubt that the Galicias are the recognized owners of the subject property because no less than the court ordered the Register of Deeds of Manila to issue a title in their names. As a gesture of utmost precaution, PNB even waited for the title in favor of the Galicias to be issued before it executed and signed the Contract of Real Estate Mortgage. For this reason, PNB cannot be considered a mortgagee in bad faith.

WHEREFORE, the petition is hereby *GRANTED*. The assailed July 31, 2003 Decision and the October 28, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 49806 are *REVERSED* and *SET ASIDE*. The August 29, 1994 Decision[45] of the Regional Trial Court of Manila, Branch 3 in Civil Case No. 91-58130 is hereby *REINSTATED*.

Costs against respondents.

SO ORDERED.

Carpio Morales, Tinga, Chico-Nazario,[*] and *Velasco, Jr., JJ.,* concur.

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[43] *Id.* at 52.

[44] Records, pp. 234-235.

[45] *Rollo,* p. 232.

[*] Additional member in lieu of Associate Justice Arturo D. Brion who had inhibited himself for having acted in the case while in the Court of Appeals and concurred with *ponente*, Assciate Justice Roberto A. Barrios.

THIRD DIVISION

[G.R. No. 166260. February 18, 2009]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and UNITED OVERSEAS BANK (formerly known as WESTMONT BANK),** *respondents.*

SYLLABUS

MERCANTILE LAW; BANKING LAWS; PHILIPPINE CLEARING HOUSE CORPORATION RULES; CANNOT CONFER JURISDICTION ON THE TRIAL COURT TO REVIEW ARBITRAL AWARDS; RATIONALE.— x x x The Court has already explained in *Insular Savings Bank v. Far East Bank and Trust Company*, that the PCHC Rules cannot confer jurisdiction on the RTC to review arbitral awards, thus— Furthermore, petitioner had several judicial remedies available at its disposal after the Arbitration Committee denied its Motion for Reconsideration. It may petition the proper RTC to issue an order vacating the award on the grounds provided for under Section 24 of the Arbitration Law. Petitioner likewise has the option to file a petition for review under Rule 43 of the Rules of Court with the Court of Appeals on questions of fact, of law, or mixed questions of fact and law. Lastly, petitioner may file a petition for *certiorari* under Rule 65 of the Rules of Court on the ground that the Arbitrator Committee acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Since this case involves acts or omissions of a quasi-judicial agency, the petition should be filed in and cognizable only by the Court of Appeals. x x x As in *Insular*, the trial court, in this case, properly dismissed Civil Case No. 00-595 for lack of jurisdiction, not because the petition had been filed out of time, but because the court had no jurisdiction over the subject matter of the petition.

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.

Villanueva Caña and Associates Law Office for private respondent.

D E C I S I O N

NACHURA, *J.*:

The Court reviews in this Rule 45 petition the November 30, 2004 Decision[1] of the Court of Appeals (CA) in CA G.R. SP No. 78796. In the said decision, the appellate court affirmed the dismissal by the trial court of Civil Case No. 00-595,[2] a petition for the review of Philippine Clearing House Corporation (PCHC) Board Resolution No. 08-2000.[3]

The antecedent facts and proceedings follow.

Check No. 0801266381[4] dated January 13, 1997, payable to cash, and drawn against the account of Bienvenido C. Tan with petitioner Metropolitan Bank & Trust Company (Metrobank) was deposited with respondent United Overseas Bank (UOB). The check was then forwarded for clearing on January 14, 1997 through the PCHC, and, on the same date, Metrobank cleared the check.[5] In its January 27, 1997 Letter,[6] however, Metrobank informed UOB that it was returning the check on account of material alteration—the date was changed from "January 23, 1997" to "January 13, 1997," and the amount was altered from "₱1,000.00" to "₱91,000.00."[7]

Because UOB refused to accept the return and to reimburse Metrobank the amount it paid on the check, the latter, on July

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso, concurring; *rollo*, pp. 25-40.

[2] *Rollo*, pp. 115-118.

[3] *Id.* at 76-77.

[4] *Id.* at 41.

[5] *Id.* at 11.

[6] *Id.* at 42.

[7] *Id.* at 43.

18, 1997, filed a Complaint[8] (Arbicom Case No. 97-093) before the PCHC Arbitration Committee, contending in the main that UOB had the duty to examine the deposited check for any material alteration; but since UOB failed to exercise due diligence in determining that the check had been altered, UOB should bear the loss.[9] In its Answer with Counterclaim,[10] UOB interposed the defenses that it exercised due diligence, and that Metrobank failed to comply with the 24-hour clearing house rule, and, with gross negligence, cleared the check.[11]

On November 11, 1997, the Arbitration Committee directed Metrobank to submit the check to the Philippine National Police (PNP) Crime Laboratory for examination.[12]

After almost a year or on October 9, 1998, Metrobank moved for the postponement of the October 12 and 19, 1998 hearings and their resetting to November 16, 1998, on the ground that the PNP Crime Laboratory document examination results were not yet available.[13] On November 14, 1998, however, Metrobank again moved for the cancellation of the November 16, 1998 hearing and its resetting on December 10, 1998, on the same ground that the said results were not yet available for release.[14]

In the scheduled December 10, 1998 hearing, Metrobank's counsel failed to appear.[15] UOB thus moved for the dismissal of the case, which the Arbitration Committee granted.[16]

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[8] *Id.* at 44-46.

[9] *Id.* at 45.

[10] *Id.* at 47-50.

[11] *Id.* at 48.

[12] *Id.* at 51.

[13] *Id.* at 52-53.

[14] *Id.* at 54.

[15] *Id.* at 56.

[16] *Id.* at 57.

On March 9, 1999, following its receipt of the Transcript of Stenographic Notes[17] of the December 10, 1998 hearing, Metrobank filed a Motion for Reconsideration[18] of the dismissal order, attaching thereto a copy of the Medical Certificate[19] declaring that its counsel had been afflicted with influenza during the December 10, 1998 hearing, and a copy of PNP Crime Laboratory Document Examination Report No. 102-98[20] stating that the subject check had been altered.

As expected, UOB opposed the motion and argued that Metrobank was not serious in prosecuting the case considering the numerous postponements of hearings made by its counsel; and that the said counsel was trifling with the processes of the Arbitration Committee because, upon verification with his secretary, he was not really sick on December 10, 1998. Further, the examination by the PNP Crime Laboratory of the check had already been completed on July 6, 1998.[21]

On February 28, 2000, the Arbitration Committee denied Metrobank's motion.[22] Unrelenting, Metrobank filed its Second Motion for Reconsideration[23] on March 20, 2000.

On April 14, 2000, the PCHC Board of Directors issued Resolution No. 08-2000,[24] denying the second motion for reconsideration. Metrobank again moved for the reconsideration of this resolution. On May 5, 2000, however, it received communication from the PCHC Executive Secretary informing it that the proper remedy following Section 13 of the PCHC

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[17] *Id.* at 55-57.

[18] *Id.* at 58-60.

[19] *Id.* at 61.

[20] *Id.* at 62.

[21] *Id.* at 64-65.

[22] *Id.* at 69.

[23] *Id.* at 70-74.

[24] *Supra* note 3.

Rules of Procedure for Arbitration (PCHC Rules) was for it to file a notice of appeal with the PCHC and a petition for review with the Regional Trial Court (RTC) within a non-extendible period of fifteen (15) days counted from the receipt of the PCHC board resolution.[25]

Hence, on May 9, 2000, Metrobank filed its Petition for Review (Civil Case No. 00-595) with the RTC of Makati City. On July 25, 2003, the trial court rendered its Decision[26] dismissing the petition. It ruled that it had no jurisdiction over the petition, the same having been filed out of time. The trial court further ruled that the Arbitration Committee correctly dismissed the original case on account of Metrobank's failure to prosecute, and that Metrobank's claim could not be sustained considering that under prevailing jurisprudence the drawee-bank should bear the loss if it had mistakenly cleared a forged or an altered check.[27]

Dissatisfied, Metrobank appealed the case to the CA. In the assailed November 30, 2004 Decision,[28] the appellate court affirmed the ruling of the trial court. The CA ratiocinated, however, that the petition for review before the trial court was filed on time—its filing was in accordance with the PCHC Rules. The CA nevertheless ruled that the case was correctly dismissed on account of Metrobank's lack of interest to prosecute and of its violation of the 24-hour clearing house rule.[29]

Undaunted, petitioner instituted the instant petition for review on *certiorari* before this Court.

The petition is denied.

The Court notes that, after the PCHC Board of Directors issued Resolution No. 08-2000 denying petitioner's motion for

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[25] *Rollo*, p. 95.

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

[27] *Id.* at 117.

[28] *Supra* note 1.

[29] *Rollo*, pp. 32-39.

reconsideration, petitioner moved for reconsideration of that resolution. Following the incorrect advice of the PCHC Executive Secretary that the proper remedy under Section 13 of the PCHC Rules was for petitioner to file a notice of appeal with the PCHC and a petition for review with the RTC, petitioner consequently filed the petition for review with the trial court.

This erroneous move of the petitioner was fatal to its cause. The Court has already explained in *Insular Savings Bank v. Far East Bank and Trust Company*,[30] that the PCHC Rules cannot confer jurisdiction on the RTC to review arbitral awards, thus—

> Furthermore, petitioner had several judicial remedies available at its disposal after the Arbitration Committee denied its Motion for Reconsideration. It may petition the proper RTC to issue an order vacating the award on the grounds provided for under Section 24 of the Arbitration Law. Petitioner likewise has the option to file a petition for review under Rule 43 of the Rules of Court with the Court of Appeals on questions of fact, of law, or mixed questions of fact and law. Lastly, petitioner may file a petition for *certiorari* under Rule 65 of the Rules of Court on the ground that the Arbitrator Committee acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Since this case involves acts or omissions of a quasi-judicial agency, the petition should be filed in and cognizable only by the Court of Appeals.
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> In this instance, petitioner did not avail of any of the abovementioned remedies available to it. Instead it filed a petition for review with the RTC where Civil Case No. 92-145 is pending pursuant to Section 13 of the PCHC Rules to sustain its action. Clearly, it erred in the procedure it chose for judicial review of the arbitral award.
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> Having established that petitioner failed to avail of the abovementioned remedies, we now discuss the issue of the jurisdiction of the trial court with respect to the petition for review filed by petitioner.
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> Jurisdiction is the authority to hear and determine a cause - the right to act in a case. Jurisdiction over the subject matter is the power

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[30] G.R. No. 141818, June 22, 2006, 492 SCRA 145.

to hear and determine the general class to which the proceedings in question belong. Jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.

In the instant case, petitioner and respondent have agreed that the PCHC Rules would govern in case of controversy. However, since the PCHC Rules came about only as a result of an agreement between and among member banks of PCHC and not by law, it cannot confer jurisdiction to the RTC. Thus, the portion of the PCHC Rules granting jurisdiction to the RTC to review arbitral awards, only on questions of law, cannot be given effect.

Consequently, the proper recourse of petitioner from the denial of its motion for reconsideration by the Arbitration Committee is to file either a motion to vacate the arbitral award with the RTC, a petition for review with the Court of Appeals under Rule 43 of the Rules of Court, or a petition for *certiorari* under Rule 65 of the Rules of Court. In the case at bar, petitioner filed a petition for review with the RTC when the same should have been filed with the Court of Appeals under Rule 43 of the Rules of Court. Thus, the RTC of Makati did not err in dismissing the petition for review for lack of jurisdiction but not on the ground that petitioner should have filed a separate case from Civil Case No. 92-145 but on the necessity of filing the correct petition in the proper court. It is immaterial whether petitioner filed the petition for review in Civil Case No. 92-145 as an appeal of the arbitral award or whether it filed a separate case in the RTC, considering that the RTC will only have jurisdiction over an arbitral award in cases of motions to vacate the same. Otherwise, as elucidated herein, the Court of Appeals retains jurisdiction in petitions for review or in petitions for *certiorari*. x x x.[31]

As in *Insular*, the trial court, in this case, properly dismissed Civil Case No. 00-595 for lack of jurisdiction, not because the petition had been filed out of time, but because the court had no jurisdiction over the subject matter of the petition.

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[31] *Id.* at 156-158; see also *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*, G.R. No. 169332, February 11, 2008, 544 SCRA 308, 320.

We are aware that the Supreme Court has ample authority to go beyond the pleadings when, in the interest of justice and the promotion of public policy, there is a need to make its own finding to support its conclusion.[32] In this case, however, we find no compelling reason to resolve the other issues raised in the petition.

WHEREFORE, premises considered, the petition for review on *certiorari* is *DENIED*.

SO ORDERED.

Quisumbing[*] *(Acting Chairperson), Austria-Martinez,*[**] *Chico-Nazario,* and *Peralta, JJ.,* concur.

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[32] *Maharlika Publishing Corporation v. Spouses Tagle*, 226 Phil. 456, 463-464 (1986).

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February12, 2009.

SECOND DIVISION

[G.R. No. 174065. February 18, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY CANARES *Y* ALMANARES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; SUFFICIENCY THEREOF. — An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the *approximate date* of the commission of the offense; and the place where the offense was committed.

2. ID.; ID.; ID.; ID.; PRECISE DATE OF COMMISSION OF THE OFFENSE IS NOT NECESSARY TO STATE THEREIN EXCEPT WHEN DATE OF COMMISSION IS A MATERIAL ELEMENT OF THE OFFENSE. — x x x Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense. Following these principles, we held in *People v. Bugayong* that when the time given in the information is not the essence of the offense, such time does not need to be proven as alleged; the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action. We again emphasized this doctrine in the case of *People v. Rafon*, when we held it unnecessary to state in the information the precise date when the offense was committed, except when it is an essential element of the offense. *People*

v. Lizada, specifically involving the charge of rape, followed the above general principle; we stated that an information for rape is not rendered defective for failure to specify the exact date when the rape was committed. The reason for this is plain: the precise date of the commission of the rape is not an essential element of the crime. **The gravamen of the crime of rape is carnal knowledge of the woman under any of the circumstances provided by law.**

3. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; STATUTORY RAPE; ELUCIDATED. — *Statutory rape* is committed by sexual intercourse with a woman below 12 years of age regardless of her consent to the act or lack of it. Proof of force, intimidation or consent is unnecessary; force is not an element of *statutory* rape and the absence of free consent is conclusively presumed when the complainant is below the age of twelve. The law presumes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act. To convict an accused of the crime of *statutory rape*, the prosecution must prove: **first**, the age of the complainant; **second**, the identity of the accused; and **last but not the least,** the carnal knowledge between the accused and the complainant.

4. ID.; ID.; ID.; CARNAL KNOWLEDGE IS PROVEN BY PROOF OF ENTRY OR INTRODUCTION OF THE MALE ORGAN INTO THE FEMALE ORGAN. — Carnal knowledge is proven by proof of the entry or introduction of the male organ into the female organ; the "touching" or "entry" of the penis into the *labia majora* or the *labia minora* of the *pudendum* of the victim's genitalia constitutes consummated rape. The prosecution proved this element when AAA narrated during the trial the details of her rape, committed sometime in 1992.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF YOUTHFUL RAPE VICTIMS ARE, AS A GENERAL RULE, GIVEN FULL FAITH AND CREDIT; RATIONALE. — Both the RTC and CA found the above testimony *straightforward, truthful and convincing*. AAA's identification of Canares as the culprit was *positive*, *categorical* and *consistent and devoid of any showing of ill-motive on her part*. We find no reason to disturb these findings. Courts usually give greater weight to the testimony of a female victim of sexual

assault, especially a minor, because no woman would willingly undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation except to condemn the injustice done and to secure the offender's apprehension and punishment. Testimonies of youthful rape victims are, as a general rule, given full faith and credit, considering that when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed. In this case, she could not have come up with a detailed narration of what she suffered if the rape, in fact, did not really happen.

6. ID.; ID.; ID.; DENIAL; AN INHERENTLY WEAK DEFENSE THAT MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY.— Canares mainly interposed the defense of denial, an inherently weak defense that must be buttressed by strong evidence of non-culpability to merit credibility. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit. We find that the facts in this case do not present any exceptional circumstance warranting a deviation from these established rules.

7. ID.; ID.; ID.; IMPUTATION OF ILL MOTIVES WHICH LACKS CORROBORATION DOES NOT MERIT ANY EVIDENTIARY VALUE.— A last defense was the imputation of ill motives on AAA by making it appear that the criminal cases were filed for monetary reasons. We find this argument contrary to human experience. We find it inconceivable that a child's future and a family's reputation would be placed at risk and exposed to possible humiliation and dishonor for the trifling reasons Canares gave. If Canares had not really been paid his salaries, then he, not AAA and her family, would have the motivation to carry a grudge. Furthermore, the imputation lacks corroboration as it is supported only by Canares' self-serving testimony. For these reasons, it does not merit any evidentiary value.

8. CIVIL LAW; DAMAGES; AWARDS OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES, PROPER IN CASE AT BAR. — We affirm the awards of civil indemnity and moral damages the lower courts imposed. These awards are consistent with prevailing jurisprudence. Civil indemnity is awarded on the finding that rape was committed. Similarly,

moral damages are awarded to rape complainants without need of pleading or proof of their basis; it is assumed that a rape complainant actually suffered moral injuries entitling her to this award. In addition, we also award exemplary damages in the amount of ₱25,000. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth. The commission of the crime in AAA's grandmother's dwelling, although not alleged in the Information (as now required by Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure), was duly proven and can also serve as basis for the award of exemplary damages under Article 2230 of the Civil Code as we ruled in *People v. Blancaflor* and *People v. Catubig*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the decision (dated May 31, 2006)[2] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 01263 that affirmed with modification the decision (dated March 17, 2003)[3] of the Regional Trial Court *(RTC)*, Branch 18, Tagaytay City in Criminal Case No. TG-3255-99. The RTC found the accused-appellant, Rolly Canares *y* Almanares (*Canares*), guilty beyond reasonable doubt of *statutory rape*.

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

[2] *Rollo*, pp. 3-11; penned by Associate Justice Hakim S. Abdulwahid, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Vicente Q. Roxas, concurring.

[3] CA *Rollo*, pp. 17-27; penned by Hon. Alfonso S. Garcia.

Canares was charged in two separate Informations for rape and attempted rape in relation with Republic Act No. 7610 (the Child Abuse Law). These Informations respectively state:

Criminal Case No. TG-3255-99

That sometimes (sic) between the year 1992 to 1995 at Barangay Sabutan, Municipality of Silang, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of the victim who was then nine (9) years old, did, then and there, willfully (sic), unlawfully and feloniously, have carnal knowledge of one AAA[4], against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

Criminal Case No. SC-3261-00

That on or about the 25th day of March, 1999, at Brgy. Sabutan, Municipality of Silang, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs by means of force, violence and intimidation and taking advantage of his superior strength over the person of the victim who was sixteen (16) years old, did, then and there, willfully, unlawfully and feloniously attempt to have carnal knowledge of one AAA, against her will and consent, the above-named accused, having thus commenced the commission of the crime of Rape directly by overt acts but which nevertheless did not produce it by reason of causes other than accused own spontaneous desistance, that is, by reason of the timely arrival of BBB who hit the head of herein accused with a base (sic) thereby preventing him from further consummating the crime, to the damage and prejudice of said AAA.

CONTRARY TO LAW.[6]

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[4] 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).

[5] I Records, p. 1.

[6] II Records, p. 1.

Canares, with the assistance of counsel *de oficio*, pleaded not guilty to both charges.[7] The trial court ordered a joint trial since the same parties and similar subject matters and antecedent events were involved. At pre-trial, the parties made no admission or stipulation of facts.[8] The prosecution marked its documentary evidence with the reservation to present additional evidence in the course of the trial.[9] The defense did not mark any documentary evidence.

At the trial proper, the prosecution presented the following as witnesses: AAA (the alleged victim), BBB (the victim's aunt), and Dr. Bernadette Madrid (the Director of the Philippine General Hospital [*PGH*] Child Protection Unit). The defense relied on the sole testimony of Canares who simply denied any sexual intercourse with AAA.

The Background Facts & Developments

AAA was born on September 8, 1982 and was only about 9 or 10 years old when Canares, a helper in AAA's grandmother's house at Barangay Sabutan, Silang, Cavite, allegedly first sexually abused her. Living with AAA and her grandmother in the house were her uncle and 7 younger cousins. The sexual intercourse took place at around midnight sometime in 1992; AAA could no longer recall the exact date. AAA and her cousins were then the only occupants in their grandmother's house and were in bed sleeping. AAA awoke and found Canares lying beside

[7] I Records, p. 30.

[8] I Records, pp. 33-34.

[9] Order dated May 15, 2000; Insofar as Criminal Case No. TG-3255-99: (1) Personal complaint filed by AAA (Exhibit "A"); (2) Provisional Medical Certificate (Exhibit "B"); (3) Birth Certificate (Exhibit "C"); (4) Sworn statement of BBB (Exhibit "D"); (5) Sworn statement of AAA (Exhibit "E"); (6) TSN on preliminary examination of AAA (Exhibit "F"); and (7) TSN on preliminary examination of AAA (Exhibit "G"). Meanwhile, in the trial proper, the prosecution marked the following exhibits for Criminal Case No. TG-3261-00, to wit: (1) Personal complaint of AAA (Exhibit "A"); (2) Sworn statement of AAA (Exhibit "B"); and (3) Sworn Statement of BBB (Exhibit "C"). It also manifested that it is adopting the other exhibits in Criminal Case No. TG-3255-99; II Records, pp. 22-23.

them. Canares undressed her, removed her shorts and panty, and then had sexual intercourse with her by inserting his penis into her genital organ. AAA felt pain and bled but kept the incident to herself because Canares threatened to kill her.[10]

Canares allegedly repeated the sexual abuse more than ten times between the first incident in 1992 and 1995. He stopped from 1996-1999.[11] AAA attributed the gap to the lack of opportunity on Canares' part; her uncle was then always at home.[12] Canares also began working as a tricycle driver and subsequently went to the province where he temporarily stayed.[13] Except for the sexual abuse in 1992, AAA could no longer remember the details of the other incidents. She was certain, however, that there was penile penetration in every incident.[14]

The last incident that immediately gave rise to the present charges occurred on March 25, 1999. AAA met Canares at the stairs of her grandmother's house as Canares was on his way to the *bodega* of the house which he used as his sleeping quarters. He told AAA that he had something to tell her and pulled her towards the *bodega*. Inside, Canares embraced her and pulled down her shorts. AAA resisted and pushed against Canares as she also shouted for help. BBB – AAA's aunt – came to her rescue and hit Canares on the head with a flower vase.[15] Triggered by this incident, AAA disclosed to her mother and relatives the sexual abuse she had long suffered in the hands of Canares.[16]

On March 26, 2000, AAA went to the PGH Child Protection Unit for medical examination. The findings showed that she

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[10] I Records, pp. 7-8; TSN, July 3, 2002, pp. 5, 7, 9, 11-13 and 15.

[11] TSN, July 3, 2000, pp. 21-22.

[12] *Sinumpaang Salaysay* dated April 26, 1999 of AAA, p. 4; I Records, p. 18.

[13] *Ibid.*

[14] TSN, July 3, 2000, p. 26.

[15] TSN, July 3, 2000, pp. 23-26; and TSN, August 28, 2001, pp. 8-9.

[16] TSN, July 3, 2000, p. 19.

had a healed laceration at the 6:00 position of her hymen *indicating previous penetration*.[17] On March 27, 2000, AAA and BBB executed their respective *Sinumpaang Salaysay* about Canares' sexual abuses before the police authorities. After the Joint Preliminary Examination conducted before the Municipal Circuit Trial Court of Silang-Amadeo, Cavite on April 26, 1999, AAA lodged a formal complaint for rape and attempted rape against Canares.[18]

Canares denied the accusations against him.[19] He claimed that the charges were filed against him at the instance of AAA's grandmother and uncle because of the nonpayment of his salary as a farm hand and as a tricycle driver. AAA's uncle also allegedly failed to pay him a previous loan of ₱10,000.[20] He also claimed that it was impossible for him to rape AAA because she came to live at her grandmother's house only in 1997.[21] He argued that the rape could not have possibly occurred considering the number of people staying in the house; a shout from someone being assaulted could easily be heard in the house.[22]

The RTC gave greater credence to the prosecution's evidence, particularly, the testimony of AAA which it found to be straightforward, truthful, and convincing.[23] The trial court observed that AAA's young age and gender rendered it unlikely that she would concoct a story of defloration that would subject her to public trial and ridicule.[24] At the same time, the RTC rejected Canares' unsubstantiated denial and held that it cannot prevail over credible positive testimony.[25] The dispositive portion of the RTC decision reads:

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[17] Provisional Medical Certificate; I Records, pp. 7-8.

[18] Conducted by Hon. Ma. Victoria N. Cupin-Tesorero, the presiding judge of the Second Municipal Circuit Trial Court of Silang-Amadeo, Cavite.

[19] TSN, January 22, 2002, pp. 11 and 19.

[20] *Id.*, p. 20.

[21] *Id.*, pp. 16-17.

[22] *Id.*, pp. 17-19.

[23] CA *Rollo*, p. 25.

[24] *Id.*, p. 26.

[25] *Id.*, pp. 26-27.

WHEREFORE, finding the guilt of the accused ROLLY CANARES *Y* ALMARANES to be beyond reasonable doubt, the Court hereby sentences him to suffer imprisonment of *RECLUSION PERPETUA.* Accused is also ordered to indemnify the victim AAA Catherine Amodente the sum of Php100,000.00 as moral damages. Costs against the accused.

SO ORDERED.[26]

The RTC acquitted Canares of the crime of attempted rape for the prosecution's failure to establish his guilt beyond reasonable doubt:

…From the preponderance of evidence presented, the prosecution failed to prove the guilt of the accused in this case beyond reasonable doubt. The court therefore ACQUITS the accused Rolly Canares of the crime of "Attempted Rape" and the case against him is DISMISSED.[27]

The CA affirmed with modification Canares' rape conviction, ruling as follows:[28]

WHEREFORE**,** the assailed Decision dated March 17, 2003 of the RTC, Branch 18, Tagaytay City, in Criminal Case No. TG-3255-99, is **AFFIRMED** with **MODIFICATION**, by reducing the award of moral damages from Php 100,000.00 to Php 50,000.00, and ordering the accused-appellant to pay AAA the amount of Php 50,000.00 as civil indemnity, in addition to moral damages.

SO ORDERED.[29]

In his Appeal Brief,[30] Canares raises the lone issue:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

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

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

[28] Previously, we transferred the initial review of the case to the CA *via* Resolution dated June 22, 2005, in view of the ruling in *People v. Mateo,* G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[29] *Rollo,* p. 11.

[30] CA *Rollo,* pp. 54-65.

Canares contends that he should not have been convicted of rape because the Information was defective: it failed to specify with certainty when the alleged rape was committed. He argues that the allegation that the rape was committed "sometime between the year 1992 to 1995" is very broad, considering particularly AAA's testimony that she was raped more than 10 times. He posits that since the specific incident of rape for which he was convicted is uncertain, the doubt should be resolved in favor of his acquittal.

In their Brief,[31] the People maintain that Canares' rape conviction is backed by the evidence on record. The argument that the Information was defective should also fail because the allegation of the exact date and time of the rape is not a material point in charging the accused of rape. In any case, this alleged defect was cured when AAA testified that Canares raped her "in one evening of 1992."[32]

The Court's Ruling

We find no reason to overturn the conviction of Canares and hereby confirm his guilt for the crime of statutory rape committed against AAA sometime in 1992.

The Procedural Issue

The argument that the Information in Criminal Case No. TG-3255-99 is defective for the prosecution's failure to allege the date and time of the rape is far from novel. We have repeatedly met and debunked this line of argument in rape cases.

An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the *approximate date* of the commission of the offense; and the place where the offense was committed. Section 11 of the same Rule also

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[31] *Id.*, pp. 83-91.

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

provides that it is not necessary to state in the complaint or information the precise date the offense was committed except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense.[33]

Following these principles, we held in *People v. Bugayong*[34] that when the time given in the information is not the essence of the offense, such time does not need to be proven as alleged; the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action. We again emphasized this doctrine in the case of *People v. Rafon*,[35] when we held it unnecessary to state in the information the precise date when the offense was committed, except when it is an essential element of the offense.

People v. Lizada,[36] specifically involving the charge of rape, followed the above general principle; we stated that an information for rape is not rendered defective for failure to specify the exact date when the rape was committed. The reason for this is plain: the precise date of the commission of the rape is not an essential element of the crime.[37] **The gravamen of the**

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[33] Pamaran, *The 1985 Rules of Criminal Procedure Annotated*, 67 [2001 ed.].

[34] G.R. No. 126518, December 2, 1998, 299 SCRA 528, 537 citing *U.S. v. Smith*, 3 Phil 20 (1903).

[35] G.R. No. 169059, September 5, 2007, 532 SCRA 370, 379.

[36] G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 83.

[37] *Ibid.* See *People v. Gianan*, G.R. Nos. 135288-93, September 15, 2000, 340 SCRA 481, 486; *People v. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 192, 201; *People v. Escaño*, G.R. Nos. 140218-23, February 13, 2002, 376 SCRA 670, 686; *People v. Rafon*, *supra* note 35, pp. 380-381; and *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 28.

crime of rape is carnal knowledge of the woman under any of the circumstances provided by law.[38]

Thus, we have ruled that allegations of rape in the information committed, "sometime in the year 1991 and the days thereafter,"[39] "on or about and sometime in the year 1988,"[40] or "from November 1990 up to July 21, 1994,"[41] "sometime in the year 1982 and dates subsequent thereto," and "sometime in the year 1995 and subsequent thereto,"[42] all constitute sufficient compliance with Section 11 of Rule 110. In *People v. Salalima*, we also ruled that the allegation that the sexual assaults were committed, "sometime during the month of March 1996 or thereabout," or "sometime during the month of April 1996 or thereabout," and also, "sometime during the month of May 1996 or thereabout" substantially informed the accused of the crimes charged since all the elements of rape were stated in the informations. [43]

The situation in the present case can be directly compared with *People v. Bugayong*[44] where the information charged that the accused committed multiple rapes "before and until October 15, 1994." We found this allegation sufficient to convict the accused of rape committed in 1993 on account of the categorical statement in the private complainant's sworn affidavit of the year when the rape was committed. The Court found that this allegation substantially cured the perceived vagueness

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[38] Article 335 of the Revised Penal Code before its amendment.

[39] *People v. Magbanua*, G.R. No. 128888, December 3, 1999, 319 SCRA 719, 730.

[40] *People v. Santos*, G.R. Nos. 131103 & 143472, June 29, 2000, 334 SCRA 655, 657-658.

[41] *People v. Garcia*, G.R. No. 120093, November 6, 1997, 281 SCRA 463, 467.

[42] *People v. Espejon*, G.R. No. 134767, February 20, 2002, 377 SCRA 412, 415.

[43] *Supra* note 37, p. 202.

[44] *Supra* note 34, p. 541.

in the criminal charge and ruled that the accused has been sufficiently informed under the circumstances.[45]

In this regard, AAA unequivocally and repeatedly stated that the first sexual intercourse Canares had with her occurred sometime in 1992.[46] Following *Bugayong,* this statement removes from Canares any reason to complain that he was not adequately informed of the charge against him before he was arraigned. The Information referred to a rape that started in 1992 and this first incident was sufficiently narrated in AAA's statements before and after arraignment. Canares never raised this argument in any motion filed with the trial court before his arraignment. He likewise fully participated in the trial on the merits without raising this argument; he cross-examined the prosecution witnesses and formally objected to the prosecution's offer of evidence. Raised for the first time in this appeal, we can only label the argument as a desperation move that is too late in the day for the defense to make.[47]

We add that while AAA testified that Canares had raped her more than 10 times, Canares was not charged for all ten rapes. The Information only sought to hold him liable for a single count of rape committed "sometime between 1992 to 1995." The Information is very specific, too, that the victim was then nine (9) years old so that the rape referred to was the incident on or about 1992, given that AAA was born in September 1982. In her *Sinumpaang Salaysay* that became the basis for the Information,[48] AAA clearly stated that Canares raped her when she was 9 years old, but did not report it to her parents because she was scared.[49] (AAA would have been 9 years old if the rape occurred before September 8, 1992.) At

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[45] *Ibid.*

[46] *Sinumpaang Salaysay,* Preliminary Examination dated April 26, 1999 and TSN, July 3, 2000, p. 8.

[47] *People v. Nazareno*, *supra* note 37, p. 30.

[48] Dated March 27, 1999.

[49] Records, p. 6.

the trial, on the other hand, AAA was firm and categorical about the fact of rape and of Canares' identity as the perpetrator.[50] Thus, AAA clearly referred to the first incident of rape that happened around midnight in 1992.[51] Following *People v. Gianan*[52] that the Office of the Solicitor General cited, her testimony substantially cured any defect posed by the date stated in the Information.[53] In *Gianan*, we held:

> In any event, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during the trial and any objection based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment.[54]

Substantive Issue

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent to the act or lack of it.[55] Proof of force, intimidation or consent is unnecessary; force is not an element of *statutory* rape and the absence of free consent is conclusively presumed when the complainant is below the age of twelve.[56] The law presumes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[57]

To convict an accused of the crime of *statutory rape*, the prosecution must prove: **first,** the age of the complainant; **second**, the identity of the accused; and **last but not the**

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[50] TSN, July 3, 2000, pp. 8, 14-15.

[51] *Id.*, p. 9.

[52] *Supra* note 37.

[53] CA *Rollo*, p. 92.

[54] *Supra* note 52, p. 487.

[55] *People v. Jalosjos*, G.R. Nos. 132875-76, November 16, 2001, 369 SCRA 179, 219.

[56] *People v. Escultor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 667.

[57] *People v. Jalosjos*, *supra* note 55, p. 219.

least, the carnal knowledge between the accused and the complainant.[58]

The first and second elements have been established by the presentation of a Certification from the Office of the Municipal Civil Registrar of Silang, Cavite dated April 21, 1999 stating that AAA was born on September 8, 1982.[59] Hence, she was only 9, or at most 10, years old when the rape was committed in 1992. In and out of court, she consistently identified Canares as her rapist.[60]

Carnal knowledge is proven by proof of the entry or introduction of the male organ into the female organ; the "touching" or "entry" of the penis into the *labia majora* or the *labia minora* of the *pudendum* of the victim's genitalia constitutes consummated rape.[61] The prosecution proved this element when AAA narrated during the trial the details of her rape, committed sometime in 1992, as follows:

Q: What did he do exactly to you?

A: He touched my breasts and he inserted his private organ into mine, sir.

Q: Was he able to insert his organ into yours?

A: Yes, sir.

FISCAL VELASCO, JR.:

Q: Considering, as you said, that (sic) was the first time, how did you feel?

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[58] *People v. Mingming*, G.R. No. 174195, December 10, 2008.

[59] I Records, p. 10.

[60] *Sinumpaang Salaysay* dated March 27, 1999; Joint Preliminary Examination dated April 26, 1999 and TSN, July 3, 2000, p. 8.

[61] *People v. Aguiluz*, G.R. No. 133480, March 15, 2001, 354 SCRA 465, 472.

WITNESS:

A: It was painful, sir.[62]

xxx xxx xxx

xxx xxx xxx

COURT:

Q: How many times were you abused on that evening?

WITNESS:

A: Once, your Honor.

Q: Was he able to penetrate your private organ on that first night?

A: Yes, sir.

Q: You mean he was able to insert his penis into your vagina?

A: Yes, sir.[63]

Parenthetically, the pain that AAA said she suffered is, in itself, an indicator of the commission of rape. We so held in *People v. Tampos*[64] and *People v. Borromeo*.[65] There is the added element, too, that AAA's testimony is supported by physical and supporting testimonial evidence. There was the healed laceration found in her hymen which is remarkably compatible with her claim of sexual molestation. Dr. Madrid, in testifying on the healed laceration, stated that it could have been caused by a penis.[66]

Both the RTC and CA found the above testimony *straightforward, truthful and convincing*.[67] AAA's

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[62] TSN, July 3, 2000, pp. 9 and 14-15.

[63] *Id.*, p. 17 – TSN, July 3, 2000.

[64] G.R. No. 142740, August 6, 2003, 408 SCRA 403, 415.

[65] G.R. No. 150501, June 3, 2004, 430 SCRA 533, 542.

[66] TSN, February 27, 2001, p. 9.

[67] CA *Rollo*, pp. 25-26; and *rollo*, pp. 7-8.

identification of Canares as the culprit was *positive, categorical* and *consistent and devoid of any showing of ill-motive on her part*.[68] We find no reason to disturb these findings. Courts usually give greater weight to the testimony of a female victim of sexual assault, especially a minor, because no woman would willingly undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation except to condemn the injustice done and to secure the offender's apprehension and punishment.[69] Testimonies of youthful rape victims are, as a general rule, given full faith and credit, considering that when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[70] In this case, she could not have come up with a detailed narration of what she suffered if the rape, in fact, did not really happen.

Canares mainly interposed the defense of denial, an inherently weak defense that must be buttressed by strong evidence of non-culpability to merit credibility.[71] As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit. We find that the facts in this case do not present any exceptional circumstance warranting a deviation from these established rules.

Canares likewise claimed before the RTC that the rape as alleged did not take place since AAA was not living at her grandmother's house from 1992 up to 1995. We find this argument untenable. AAA refuted this claim during her direct examination when she stated that she was already living at her grandmother's house as early as 1991.[72] The defense utterly failed to disprove

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

[69] *People v. De Guzman,* G.R. Nos. 140333-34, December 11, 2001, 372 SCRA 95, 109-110.

[70] *People v. Pacheco,* G.R. No. 142887, March 2, 2004, 424 SCRA 164, 175.

[71] *People v. Soriano,* G.R. No. 135027, July 3, 2002, 383 SCRA 676.

[72] TSN, July 3, 2000, p. 6.

this testimony when AAA was cross-examined. Canares, for his part, made inconsistent statements about this claim during his own cross-examination. Under this evidentiary situation, we give weight to what AAA had declared.

A last defense was the imputation of ill motives on AAA by making it appear that the criminal cases were filed for monetary reasons. We find this argument contrary to human experience. We find it inconceivable that a child's future and a family's reputation would be placed at risk and exposed to possible humiliation and dishonor for the trifling reasons Canares gave. If Canares had not really been paid his salaries, then he, not AAA and her family, would have the motivation to carry a grudge. Furthermore, the imputation lacks corroboration as it is supported only by Canares' self-serving testimony. For these reasons, it does not merit any evidentiary value.

The Penalty

The Information for *statutory rape* immediately tells us that the crime charged was committed prior to the passage of the law imposing death for rape cases[73] and the new rape law.[74] Article 335 of the Revised Penal Code, the law then in place, provided:

> Article 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious;
>
> and
>
> 3. When the woman is under twelve years of age …
>
> The crime of rape shall be punished by *reclusion perpetua*.

[73] Republic Act No. 7659 took effect on December 31, 1993.

[74] Republic Act No. 8353 or the Anti-Rape Law of 1997 took effect on October 22, 1997.

xxx xxx xxx

Considering that AAA's minority was sufficiently alleged and proven during trial without objection on the part of the defense, both the RTC and CA correctly imposed the proper penalty of *reclusion perpetua*.

We affirm the awards of civil indemnity and moral damages the lower courts imposed. These awards are consistent with prevailing jurisprudence.[75]

Civil indemnity is awarded on the finding that rape was committed.[76] Similarly, moral damages are awarded to rape complainants without need of pleading or proof of their basis; it is assumed that a rape complainant actually suffered moral injuries entitling her to this award.[77]

In addition, we also award exemplary damages in the amount of ₱25,000. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[78] The commission of the crime in AAA's grandmother's dwelling, although not alleged in the Information (as now required by Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure[79]), was duly proven and can also serve as

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[75] *People v. Codilan*. G.R. No. 177144, July 23, 2008; *People v. Custodio,* G.R. No. 176062, July 4, 2008; *People v. Moriño,* G.R. No. 176265, April 30, 2008; *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 352; *People v. Limos,* G.R. Nos. 122114-17, January 20, 2004, 420 SCRA 183, 205.

[76] *People v. Jalosjos, supra* note 55, p. 220.

[77] *People v. Dimaano,* G.R. No. 168168, September 14, 2005, 469 SCRA 647, 670.

[78] *People v. Pacheco, supra*. note 70, p. 178.

[79] 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 accusations. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances

basis for the award of exemplary damages under Article 2230 of the Civil Code as we ruled in *People v. Blancaflor*[80] and *People v. Catubig*.[81] We held in *Catubig* that the retroactive application of procedural rules cannot adversely affect the rights of the private offended party that have become vested prior to its effectivity.[82] We reiterated this doctrine in *People v. Victor*[83] and *People v. Legaspi*.[84]

WHEREFORE, premises considered, we hereby *AFFIRM* with *MODIFICATION* the decision dated May 31, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01263 finding Rolly Canares *y* Almanares *GUILTY* beyond reasonable doubt of the crime of *statutory rape.* In addition to the awards of civil indemnity and moral damages, he is further ordered to pay ₱25,000 as exemplary damages to AAA.

SO ORDERED.

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

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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.

[80] G.R. No. 130586, January 29, 2004, 421 SCRA 354, 366.

[81] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[82] *Id.*, p. 636.

[83] G.R. No. 127904, December 5, 2002, 393 SCRA 472, 483-484.

[84] G.R. No. 137283, February 17, 2003, 397 SCRA 531, 548.

THIRD DIVISION

[G.R. No. 177720. February 18, 2009]

ELISEO R. FRANCISCO, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PROPERTY; ESTAFA; THIRD ELEMENT THEREOF UNDER ARTICLE 315(A) DOES NOT REQUIRE THAT THE FALSE PRETENSE, FRAUDULENT ACT OR FRAUDULENT MEANS BE INTENTIONALLY DIRECTED TO THE OFFENDED PARTY. — The third element of *estafa* under Article 315(a) merely requires that the offended party must have relied on the false pretense, fraudulent act or fraudulent means. It does not require that the false pretense, fraudulent act or fraudulent means be intentionally directed to the offended party. Thus, in this case wherein a person pretended to possess credit in order to defraud third persons (Solidbank Mastercard and AIG Visa), but the offended party nevertheless relied on such fraudulent means and consequently suffered damage by virtue thereof, such person is liable for *estafa* under Article 315(a), even though the fraudulent means was not intentionally directed to the offended party. A person committing a felony is criminally liable although the consequences of his felonious act are not intended by him.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; EXCEPT IN CASES THAT CANNOT BE PROSECUTED *DE OFICIO*, A COMPLAINT FILED BY THE OFFENDED PARTY IS NOT NECESSARY FOR THE INSTITUTION OF A CRIMINAL ACTION. — [E]ven assuming for the sake of argument that Solidbank Mastercard and AIG Visa were the proper offended parties in this case, petitioner Francisco is mistaken in his assertion that it was essential for either Solidbank Mastercard or AIG Visa to have filed the complaint for *estafa*. Except in cases that cannot be prosecuted *de oficio*, namely adultery, concubinage, seduction, abduction and acts of lasciviousness, a complaint filed by the offended party is not necessary for the institution of a criminal action. The Information filed by the prosecutor with the proper court

is sufficient. A crime is an offense against the State, and hence is prosecuted in the name of the People of the Philippines. The participation of the private offended party is not essential to the prosecution of crimes, except in the crimes stated above, or in the prosecution of the civil action deemed instituted with the criminal action. A complaint for purposes of preliminary investigation by the prosecutor need not be filed by the "offended party" but may be filed by any competent person, unless the offense subject thereof cannot be prosecuted *de oficio*.

3. CRIMINAL LAW; CRIMES AGAINST PROPERTY; ESTAFA; IMPOSABLE PENALTY; EXPLAINED.— The Court of Appeals was correct in modifying the penalty to be imposed on petitioner Francisco. Article 315 of the Revised Penal Code provides that the penalty for *estafa* is "(t)he 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." Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty should be one degree lower than *prision correccional* in its maximum period to *prision mayor* in its minimum period, the period prescribed in the Revised Penal Code. One degree lower than the above penalty would be *prision correccional* in its minimum period to *prision correccional* in its medium period, the inclusive imprisonment duration for which is 6 months and 1 day to 4 years and 2 months. The minimum term of the indeterminate sentence imposed by the Court of Appeals, which is 4 years and 2 months, is within the above-stated period. The maximum term of the indeterminate penalty, according to the Indeterminate Sentence Law, is "that which, in view of the attending circumstances, could be properly imposed under the Rules of the said Code." As held by the Court of Appeals, the total amount defrauded is ₱681,574.77. This exceeds the threshold amount of ₱22,000 by ₱659,547.77. There are, thus, 65 additional ₱10,000.00s. This would have resulted in an additional 65 years, if not for the maximum imposable penalty of twenty years. The Court of Appeals, therefore, properly pegged the maximum term of the indeterminate sentence at twenty years.

APPEARANCES OF COUNSEL

Michael E. Vargas for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Court of Appeals' Decision[1] dated 28 February 2007 and Resolution dated 4 May 2007 in CA-G.R. CR No. 29699 be set aside.

The facts of the case are as follows:

In an Amended Information dated 9 November 2000, which was filed on 13 November 2000 with the Regional Trial Court (RTC) of Pasig City, petitioner Eliseo Francisco, Jr. (Francisco) was charged with Estafa in an Amended Information, as defined in Article 315, par. 2(a)[2] of the Revised Penal Code.

On arraignment, petitioner Francisco pleaded not guilty. Trial ensued.

The prosecution's evidence tends to establish the following facts:

Private complainant Bankard, Inc. is a credit card company engaged in issuing credit cards and in acquiring credit card receivables from commercial establishments arising from the

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[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizzarro, concurring; *rollo*, pp. 35-52.

[2] Article 315, par. 2(a) of the Revised Penal Code provides:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

purchase of goods and services by credit card holders using Mastercard or Visa credit cards issued by other banks and credit card companies. Mastercard or Visa pays Bankard for the amount Bankard has paid the commercial establishments for the invoices it acquires. On the other hand, Mastercard or Visa debits Bankard for the amount due to other credit card companies or banks which acquire the invoices where the credit card used for the purchase is issued by Bankard.

Petitioner Francisco was an employee of Bankard at the time the alleged crime occurred. He was knowledgeable in computer programming, and held the position of Acquiring Chargeback Supervisor.

Bankard engaged the services of Equitable Computer Services, Inc. (Equicom) to encode and post credit card transactions and submit reports on those services. Procedurally, Bankard transmits to Equicom the invoices, instructions for debiting, credit advances and other documents relevant to encoding and posting. Equicom then transmits through electronic mail the reports on the transactions to Bankard. Petitioner Francisco was tasked to convert the Equicom reports sent through electronic mail from its original ARJ Text Format to the Amipro Format used by Bankard. Petitioner Francisco was the only one assigned to perform this task.

Sometime in August 1999, Solidbank, one of the companies which issues credit cards, relayed to Bankard that there were four questionable transactions reflected in Solidbank Mastercard Account No. 5464 9833 0005 1922 under the name of petitioner Francisco. An amount of ₱663,144.56 was allegedly credited to said account of petitioner Francisco, the credit apparently being a reversal of charges from four establishments. The amount of ₱18,430.21 was also credited to petitioner Francisco's AIG Visa Card based on another supposed credit advance.

Bankard conducted an investigation. Upon comparison of the original reports of Equicom with those converted by petitioner Francisco, it was found that based on Equicom's original Daily Transaction Prooflist, there was a reversal of charges from

Bankard Travel Services in the amount of $5,989.60 which was credited to the credit card under the name of petitioner Francisco, with a conversion date of 10 August 1999. The Outgoing Interchange Transaction also reflected a reversal of a transaction with Bankard Travel and the credit of the amount of $5,989.60 to Cardholder No. 5464 9833 0005 1922 on 1 August 1999. The converted report no longer reflected the reversal of charges. The crediting of the amount of $5,989.60 as stated in the original reports coming from Equicom and Mastercard was deleted and replaced with the figure zero.

There was also no record of the transactions or purchases from the four establishments charged against petitioner Francisco's Mastercard Account No. 5464 9833 0005 1922 and AIG Visa Account No. 4009 9218 0463 3006 that may be reversed. Only those availments which have been charged against the credit cards could be reversed, and the amount charged for such availments would then be returned and credited to the same credit card. Since there were no original purchase transactions charged against petitioner Francisco's credit cards, the reversal of charges and the crediting of sums of money to petitioner Francisco's credit cards appeared to be fictitious.

Petitioner Francisco was the person who received the transmittals from Equicom of documents including any purported cash advice at the time the credit transactions were made in favor of his credit card accounts.

As a result of the fraudulent crediting of the amount of ₱663,144.56 to petitioner Francisco's Solidbank credit card account, Bankard was made to pay the same to Solidbank in the course of the settlement of transactions between the issuing banks from the time of the crediting of the amount to petitioner Francisco's credit card account until the fraudulent credits were charged back to Solidbank on 27 August 1999. Solidbank again charged back Bankard for the said amount, from 4 September 1999 to 3 October 1999. Thus, during the time the amount was charged against Bankard, the latter was unable to use such amount. Bankard was unable to recover the amount of ₱18,430.21 which petitioner Francisco fraudulently credited to his AIG Visa Card No. 4009 9218 0463 3006.

The defense presented petitioner Francisco as its lone witness. Petitioner Francisco denied that he caused the crediting of said amounts to his credit cards.

On 10 January 2005, the RTC rendered its Decision convicting petitioner Francisco as follows:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, considering that the prosecution has proven beyond reasonable doubt that accused ELISEO FRANCISCO is GUILTY of the crime charged, the Court hereby sentences said accused of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, as amended.
>
> Accordingly, accused is hereby sentenced to suffer an indeterminate penalty of imprisonment of 2 years 4 months of *arresto mayor* as minimum to 6 years 2 months and 11 days of *prision mayor* as maximum and ordered to reimburse private complainant Bankard, Inc., of the amount of PhP18,430.21.[3]

Petitioner Francisco filed a Motion for Reconsideration/New Trial, praying for the re-opening of the case in order that he may present the credit card statements and demand letters. Petitioner Francisco contended that Bankard's line of business affected by the instant case was that of acquiring credit card receivables. According to petitioner Francisco, this meant that he, like any other credit card holder, remained indebted to the issuers of the credit card, which were Solidbank Mastercard and AIG Visa. He should, therefore, be acquitted since private complainant Bankard was not the entity that incurred damage, but Solidbank Mastercard and AIG Visa. In an Order dated 12 July 2005, the RTC denied petitioner Francisco's Motion for Reconsideration/New Trial.

Petitioner Francisco proceeded to the Court of Appeals. On 28 February 2007, the Court of Appeals rendered its Decision affirming the conviction of petitioner Francisco, but with modification of his prison sentence:

> WHEREFORE, the appealed Decision dated January 10, 2005 is affirmed, subject to the modification of the imprisonment sentence

[3] *Rollo*, p. 65.

which should be an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as the minimum period, to twenty (20) years of *reclusion temporal*, as the maximum period.[4]

According to the Court of Appeals, the total amount defrauded, ₱681,574.77, gave rise to a minimum penalty under *prision correccional* and a maximum penalty of twenty years, pursuant to Article 315 of the Revised Penal Code, which 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 *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Petitioner Francisco now comes before this Court, bringing forth the issue for our consideration:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE ASSAILED ORDER AND DECISION OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 267, DESPITE THE ABSENCE OF AN ELEMENT IN THE CRIME CHARGED FOR WHICH PETITIONER WAS INDICTED.[5]

The element of *estafa* referred to by petitioner Francisco is the third one under Article 315(a) of the Revised Penal Code in the following list provided by this Court in several cases:

> (1) the accused uses a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or employs other similar deceits;

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[4] *Id*. at 51.

[5] *Id*. at 158.

(2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;

(3) **the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means;** and

(4) as a result thereof, the offended party suffered damage.[6] (Emphasis supplied.)

Petitioner Francisco argues that the prosecution failed to present evidence that he was privy to the business deal between Bankard and the credit card companies (Solidbank Mastercard and AIG Visa). Petitioner Francisco seems to be implying that since he was not privy to the business deal between Bankard and the credit card companies, he could not have induced Bankard to part with its money or property because of any false pretense, fraudulent act or fraudulent means committed by him, directed to the credit card companies.

We disagree.

The third element of *estafa* under Article 315(a) merely requires that the offended party must have relied on the false pretense, fraudulent act or fraudulent means. It does not require that the false pretense, fraudulent act or fraudulent means be intentionally directed to the offended party. Thus, in this case wherein a person pretended to possess credit in order to defraud third persons (Solidbank Mastercard and AIG Visa), but the offended party nevertheless relied on such fraudulent means and consequently suffered damage by virtue thereof, such person is liable for *estafa* under Article 315(a), even though the fraudulent means was not intentionally directed to the offended party. A person committing a felony is criminally liable although the consequences of his felonious act are not intended by him.[7]

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[6] *Flores v. Layosa*, G.R. No. 154714, 12 August 2004, 436 SCRA 337, 347.

[7] Article 4 of the Revised Penal Code provides:

In any case, the prosecution has successfully proven damage on the part of private complainant Bankard. As held by the Court of Appeals:

> As a result of the fictitious credits which the accused caused to be posted in his credit cards, private complainant [Bankard] suffered damages when it was made to pay Solidbank the fictitious credit in the course of the settlement of transactions between the issuing banks from the time of the crediting of the said amount to the credit card of the accused until the fraudulent credits where charged back to Solidbank on 27 August 1999. Solidbank again charged back private complainant for the said amount from 4 September 1999 to 3 October 1999. Hence, during the time the amount was charged against private complainant, the latter was unable to use its fund in the amount of PhP663,144.56 for a period of at least three (3) months. Likewise, private complainant was unable to recover the amount of PhP18,430.21 which the accused fraudulently credited to his AIG Visa Credit Card No. 4009 9218 0463 3006.[8]

Petitioner Francisco further argues that Bankard had no personality to file the complaint, since the credit card companies were the ones which really suffered damage in the case at bar. Thus, argued petitioner Francisco, the third element of *estafa* under Article 315(a) was lacking:

> Stated otherwise, this element speaks of an offended party which undoubtedly may only refer to Solidbank Mastercard and AIG Visa simply because it was these two credit card companies that extended credit facilities to herein petitioner when the latter used his credit cards.
>
> Despite this factual setup however, not even one of these credit card companies appeared as private complainant in the instant case. BANKARD Inc., the former employer of herein petitioner is the one who lodged the criminal complaint after the latter filed an illegal dismissal case against it before the National Labor Relations Commission. Worse, the assailed Decision of the Honorable Court

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Article 4. *Criminal liability.* — Criminal liability shall be incurred:

1. By any person committing a felony *(delito)* although the wrongful act done be different from that which he intended.

[8] *Rollo*, pp. 47-48.

of Appeals even awarded civil liabilities in favor of BANKARD Inc. corresponding to the accumulated credit balances of petitioner with Mastercard and Visa, when in truth and in fact, Mastercard and Visa continues even up to the present to exert collection effort against petitioner by sending him corresponding demand letters.[9]

Firstly, as discussed above, it was duly proven that Bankard also suffered damages by reason of fraudulent acts committed by petitioner Francisco.

Secondly, even assuming for the sake of argument that Solidbank Mastercard and AIG Visa were the proper offended parties in this case, petitioner Francisco is mistaken in his assertion that it was essential for either Solidbank Mastercard or AIG Visa to have filed the complaint for *estafa*.

Except in cases that cannot be prosecuted *de oficio*, namely adultery, concubinage, seduction, abduction and acts of lasciviousness,[10] a complaint filed by the offended party is not necessary for the institution of a criminal action. The Information filed by the prosecutor with the proper court is sufficient.

A crime is an offense against the State, and hence is prosecuted in the name of the People of the Philippines. The participation of the private offended party is not essential to the prosecution of crimes, except in the crimes stated above, or in the prosecution of the civil action deemed instituted with the criminal action.[11] A complaint for purposes of preliminary investigation by the prosecutor need not be filed by the "offended party" but may be filed by any competent person, unless the offense subject thereof cannot be prosecuted *de oficio*.[12]

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[9] *Rollo*, pp. 162-163.

[10] Section 4, Rule 10 of the Rules of Court.

[11] Section 1, Rule 111 of the Rules of Court.

[12] Regalado, *REMEDIAL LAW COMPENDIUM* (10th Ed., p. 274); *Hernandez v. Albano*, 112 Phil. 507, 509 (1961); *Ebarle v. Sucaldito*, G.R. No. L-33628, 29 December 1987, 156 SCRA 803, 819.

The Court of Appeals was correct in modifying the penalty to be imposed on petitioner Francisco. Article 315 of the Revised Penal Code provides that the penalty for *estafa* is "(t)he 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."

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty should be one degree lower than *prision correccional* in its maximum period to *prision mayor* in its minimum period, the period prescribed in the Revised Penal Code. One degree lower than the above penalty would be *prision correccional* in its minimum period to *prision correccional* in its medium period, the inclusive imprisonment duration for which is 6 months and 1 day to 4 years and 2 months. The minimum term of the indeterminate sentence imposed by the Court of Appeals, which is 4 years and 2 months, is within the above-stated period.

The maximum term of the indeterminate penalty, according to the Indeterminate Sentence Law, is "that which, in view of the attending circumstances, could be properly imposed under the Rules of the said Code." As held by the Court of Appeals, the total amount defrauded is ₱681,574.77. This exceeds the threshold amount of ₱22,000 by ₱659,547.77. There are, thus, 65 additional ₱10,000.00s. This would have resulted in an additional 65 years, if not for the maximum imposable penalty of twenty years. The Court of Appeals, therefore, properly pegged the maximum term of the indeterminate sentence at twenty years.

WHEREFORE, the Decision of the Court of Appeals dated 28 February 2007 and Resolution dated 4 May 2007 in CA-G.R. CR No. 29699, are hereby *AFFIRMED*. Costs against petitioner Francisco.

SO ORDERED.

Quisumbing,[*] *Austria-Martinez (Acting Chairperson), Corona,*[**] and *Carpio Morales,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 178906. February 18, 2009]

ELVIRA T. ARANGOTE, *petitioner, vs.* **SPS. MARTIN MAGLUNOB and LOURDES S. MAGLUNOB, and ROMEO SALIDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT ON APPEAL AND SHOULD NOT BE DISTURBED EXCEPT FOR STRONG AND VALID REASONS.— It is a hornbook doctrine that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying. It is not a function of this Court to analyze and weigh evidence by the parties all over again. This Court's jurisdiction is, in principle, limited to reviewing errors of law that might have been committed by the Court of Appeals. This rule, however, is subject to several

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[*] Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[**] Associate Justices Renato C. Corona and Conchita Carpio Morales were designated to sit as additional members replacing Associate Justices Antonio Eduardo B. Nachura and Diosdado M. Peralta per Raffle dated 16 February 2009.

exceptions, one of which is present in this case, *i.e.*, when the factual findings of the Court of Appeals and the trial court are contradictory.

2. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; DONATION OF REAL PROPERTY; REQUISITES. — [T]hree requisites for the validity of a simple donation of a real property, to wit: (1) it must be made in a public instrument; (2) it must be accepted, which acceptance may be made either in the same Deed of Donation or in a separate public instrument; and (3) if the acceptance is made in a separate instrument, the donor must be notified in an authentic form, and the same must be noted in both instruments.

3. ID.; ID.; ID.; ID.; ID.; WHERE THE DEED OF DONATION FAILS TO SHOW THE ACCEPTANCE, OR WHERE THE FORMAL NOTICE OF THE ACCEPTANCE, MADE IN A SEPARATE INSTRUMENT, IS EITHER NOT GIVEN TO THE DONOR OR ELSE NOT NOTED IN THE DEED OF DONATION AND IN THE SEPARATE ACCEPTANCE, THE DONATION IS NULL AND VOID. — This Court agrees with the RTC and the Court of Appeals that the Affidavit executed by Esperanza relinquishing her rights, share, interest and participation over the subject property in favor of the petitioner and her husband suffered from legal infirmities, as it failed to comply with the aforesaid requisites of the law. In *Sumipat v. Banga*, this Court declared that title to immovable property does not pass from the donor to the donee by virtue of a Deed of Donation **until and unless it has been accepted in a public instrument and the donor duly notified thereof**. The acceptance may be made in the very same instrument of donation. If the acceptance does not appear in the same document, it must be made in another. Where the Deed of Donation fails to show the acceptance, or where the formal notice of the acceptance, made in a separate instrument, is either not given to the donor or else not noted in the Deed of Donation and in the separate acceptance, **the donation is null and void.**

4. ID.; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; CERTIFICATE OF TITLE IS NOT SUBJECT TO COLLATERAL ATTACK; DIRECT ATTACK AND COLLATERAL ATTACK, DISTINGUISHED. — Section 48 of Presidential decree No. 1529 states: SEC. 48. *Certificate not*

subject to collateral attack. — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. Such proscription has long been enshrined in Philippine jurisprudence. The judicial action required to challenge the validity of title is a direct attack, not a collateral attack. The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.**

5. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COUNTERCLAIM; A DIRECT ATTACK ON THE CERTIFICATE OF TITLE. — A counterclaim is considered a new suit in which the defendant is the plaintiff and the plaintiff in the complaint becomes the defendant. It stands on the same footing as, and is to be tested by the same rules as if it were, an independent action. In their Answer to the Complaint for Quieting of Title filed by the petitioner and her husband before the MCTC, respondents included therein a Counterclaim wherein they repleaded all the material allegations in their affirmative defenses, the most essential of which was their claim that petitioner and her husband — by means of fraud, undue influence and deceit — were able to make their grand aunt, Esperanza, who was already old and illiterate, affix her thumbmark to the Affidavit, wherein she renounced, waived, and quitclaimed all her rights and interest over the subject property in favor of petitioner and her husband. In addition, respondents maintained in their Answer that as petitioner and her husband were not tenants either of Esperanza or of the respondents, the DAR could not have validly issued in favor of petitioner and her husband OCT No. CLOA-1748. Thus, the respondents prayed, in their counterclaim in Civil Case No. 156 before the MCTC, that OCT No. CLOA-1748 issued in the name of petitioner, married to Ray Mars E. Arangote, be declared null and void, insofar as their two-thirds shares in the subject property are concerned. It is clear, thus, that respondents' Answer with Counterclaim was a direct attack on petitioner's certificate of title. x x x

6. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM PROGRAM); CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA); GRANTED ONLY UPON FULFILLMENT OF THE REQUIREMENTS OF THE LAW. — x x x [P]etitioner and her husband were not tenants of the subject property. In fact, petitioner herself admitted in her Complaint filed before the MCTC that her husband is out of the country, rendering it impossible for him to work on the subject property as a tenant. Instead of cultivating the subject property, petitioner and her husband possessed the same by constructing a house thereon. Thus, it is highly suspicious how the petitioner was able to secure from the DAR a Certificate of Land Ownership Award (CLOA) over the subject property. The DAR awards such certificates to the grantees only if they fulfill the requirements of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Program (CARP). Hence, the RTC and the Court of Appeals did not err in declaring null and void OCT No. CLOA-1748 in the name of the petitioner, married to Ray Mars E. Arangote.

7. CIVIL LAW; PROPERTY; POSSESSION; POSSESSOR IN GOOD FAITH; DESCRIPTION. — The Civil Code describes a possessor in good faith as follows: Art. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing. Mistake upon a doubtful or difficult question of law may be the basis of good faith. Art. 1127. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.

8. ID.; ID.; ID.; ID.; CEASES FROM THE MOMENT DEFECTS IN THE TITLE ARE MADE KNOWN TO THE POSSESSOR BY EXTRANEOUS EVIDENCE OR BY A SUIT FOR RECOVERY OF THE PROPERTY BY THE TRUE OWNER; APPLICABILITY IN THE CASE AT BAR. — Possession in good faith ceases from the moment defects in the title are made known to the possessor by extraneous evidence or by a suit for recovery of the property by the true owner. Every possessor in good faith becomes a possessor in bad faith from the moment he becomes aware that

what he believed to be true is not so. In the present case, when respondents came to know that an OCT over the subject property was issued and registered in petitioner's name on 26 March 1993, respondents brought a Complaint on 7 August 1993 before the *Lupon* of *Barangay* Maloco, Ibajay, Aklan, challenging the title of petitioner to the subject property on the basis that said property constitutes the inheritance of respondent, together with their grandaunt Esperanza, so Esperanza had no authority to relinquish the entire subject property to petitioner. From that moment, the good faith of the petitioner had ceased.

9. ID.; ID.; OWNERSHIP; BUILDER IN GOOD FAITH; DEFINED.— Moreover, the petitioner cannot be considered a builder in good faith of the house on the subject property. In the context that such term is used in particular reference to Article 448 of the Civil Code, **a builder in good faith is one who, not being the owner of the land, builds on that land, believing himself to be its owner and unaware of any defect in his title or mode of acquisition.** x x x [T]he builder in good faith can compel the landowner to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. x x x

10. ID.; ID.; ID.; ID.; GOOD FAITH; ELUCIDATED. — Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

11. ID.; ID.; ID.; A TAX DECLARATION IS NOT PROOF OF OWNERSHIP BUT MERELY AN *INDICIUM* OF A CLAIM OF OWNERSHIP.— x x x [W]hen petitioner and her husband built a house thereon in 1989 they cannot be considered to have

acted in good faith as they were fully aware that when Esperanza executed an Affidavit relinquishing in their favor the subject property the only proof of Esperanza's ownership over the same was a mere tax declaration. This fact or circumstance alone was enough to put the petitioner and her husband under inquiry. Settled is the rule that a tax declaration does not prove ownership. It is merely an *indicium* of a claim of ownership. Payment of taxes is not proof of ownership; it is, at best, an *indicium* of possession in the concept of ownership. Neither tax receipts nor a declaration of ownership for taxation purposes is evidence of ownership or of a right to possess realty when not supported by other effective proofs.

APPEARANCES OF COUNSEL

*Adolfo M. Iliga*n for petitioner.
Cyril A. Tagle for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated 27 October 2006 and Resolution[2] dated 29 June 2007 of the Court of Appeals in CA-G.R. SP No. 64970. In its assailed Decision, the appellate court affirmed the Decision[3] dated 12 September 2000 of the Regional Trial Court (RTC), 6th Judicial Region, Branch 1, Kalibo, Aklan, in Civil Case No. 5511, which reversed the Decision[4]

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[1] Penned by Associate Justice Antonio L. Villamor with Associate Justices Arsenio J. Magpale and Marlene Gonzales-Sison, concurring; *rollo*, pp. 20-31.

[2] Penned by Associate Justice Antonio L. Villamor with Associate Justices Pampio A. Abarintos and Agustin S. Dizon, concurring; *rollo*, pp. 40-41.

[3] Penned by Judge Marietta J. Homena-Valencia; *rollo*, pp. 96-105.

[4] Penned by Designated Judge Raul C. Barrios; CA *rollo*, pp. 29-34.

dated 6 April 1998 of the 7th Municipal Circuit Trial Court (MCTC) of Ibajay-Nabas, Ibajay, Aklan, in Civil Case No. 156; and declared[5] the herein respondent-Spouses Martin and Lourdes Maglunob (Spouses Maglunob) and respondent Romeo Salido (Romeo) as the lawful owners and possessors of Lot 12897 with an area of 982 square meters, more or less, located in Maloco, Ibajay, Aklan (subject property). In its assailed Resolution, the appellate court denied herein petitioner Elvira T. Arangote's Motion for Reconsideration.

Elvira T. Arangote, herein petitioner married to Ray Mars E. Arangote, is the registered owner of the subject property, as evidenced by Original Certificate of Title (OCT) No. CLOA-1748.[6] Respondents Martin (Martin II) and Romeo are first cousins and the grandnephews of Esperanza Maglunob-Dailisan (Esperanza), from whom petitioner acquired the subject property.

The Petition stems from a Complaint[7] filed by petitioner and her husband against the respondents for Quieting of Title, Declaration of Ownership and Possession, Damages with Preliminary Injunction, and Issuance of Temporary Restraining Order before the MCTC, docketed as Civil Case No. 156.

The Complaint alleged that Esperanza inherited the subject property from her uncle Victorino Sorrosa by virtue of a notarized Partition Agreement[8] dated 29 April 1985, executed by the latter's heirs. Thereafter, Esperanza declared the subject property in her name for real property tax purposes, as evidenced by Tax Declaration No. 16218 (1985).[9]

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[5] In its Decision dated 12 September 2000, the RTC likewise declared the other heirs of Martin Maglunob (the great-grandfather of herein respondent Martin Maglunob) as the lawful owners and possessors of the subject property despite the fact that they are not even parties to the case.

[6] *Rollo*, p. 56.

[7] *Id.* at 44-51.

[8] CA *rollo*, pp. 144-146.

[9] *Id.* at 143.

The Complaint further stated that on 24 June 1985, Esperanza executed a Last Will and Testament[10] bequeathing the subject property to petitioner and her husband, but it was never probated. On 9 June 1986, Esperanza executed another document, an Affidavit,[11] in which she renounced, relinquished, waived and quitclaimed all her rights, share, interest and participation whatsoever in the subject property in favor of petitioner and her husband. On the basis thereof, Tax Declaration No. 16218 in the name of Esperanza was cancelled and Tax Declaration No. 16666[12] (1987) was issued in the name of the petitioner and her husband.

In 1989, petitioner and her husband constructed a house on the subject property. On 26 March 1993, OCT No. CLOA-1748 was issued by the Secretary of the Department of Agrarian Reform (DAR) in the name of petitioner, married to Ray Mars E. Arangote. However, respondents, together with some hired persons, entered the subject property on 3 June 1994 and built a hollow block wall behind and in front of petitioner's house, which effectively blocked the entrance to its main door.

As a consequence thereof, petitioner and her husband were compelled to institute Civil Case No. 156.

In their Answer with Counterclaim in Civil Case No. 156, respondents averred that they co-owned the subject property with Esperanza. Esperanza and her siblings, Tomas and Inocencia, inherited the subject property, in equal shares, from their father Martin Maglunob (Martin I). When Tomas and Inocencia passed away, their shares passed on by inheritance to respondents Martin II and Romeo, respectively. Hence, the subject property was co-owned by Esperanza, respondent Martin II (together with his wife Lourdes), and respondent Romeo, each holding a one-third *pro-indiviso* share therein. Thus, Esperanza could

[10] *Rollo*, pp. 54-55.

[11] *Id.* at 53.

[12] CA *rollo*, p. 135.

not validly waive her rights and interest over the entire subject property in favor of the petitioner.

Respondents also asserted in their Counterclaim that petitioner and her husband, by means of fraud, undue influence and deceit were able to make Esperanza, who was already old and illiterate, affix her thumbmark to the Affidavit dated 9 June 1986, wherein she renounced all her rights and interest over the subject property in favor of petitioner and her husband. Respondents thus prayed that the OCT issued in petitioner's name be declared null and void insofar as their two-thirds shares are concerned.

After trial, the MCTC rendered its Decision dated 6 April 1998 in Civil Case No. 156, declaring petitioner and her husband as the true and lawful owners of the subject property. The decretal portion of the MCTC Decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> A. Declaring the [herein petitioner and her husband] the true, lawful and exclusive owners and entitled to the possession of the [subject property] described and referred to under paragraph 2 of the [C]omplaint and covered by Tax Declaration No. 16666 in the names of the [petitioner and her husband];
>
> B. Ordering the [herein respondents] and anyone hired by, acting or working for them, to cease and desist from asserting or claiming any right or interest in, or exercising any act of ownership or possession over the [subject property];
>
> C. Ordering the [respondents] to pay the [petitioner and her husband] the amount of ₱10,000.00 as attorney's fee. With cost against the [respondents].[13]

The respondents appealed the aforesaid MCTC Decision to the RTC. Their appeal was docketed as Civil Case No. 5511.

Respondents argued in their appeal that the MCTC erred in not dismissing the Complaint filed by the petitioner and her

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[13] *Id.* at 34.

husband for failure to identify the subject property therein. Respondents further faulted the MCTC for not declaring Esperanza's Affidavit dated 9 June 1986 — relinquishing all her rights and interest over the subject property in favor of petitioner and her husband — as null and void insofar as respondents' two-thirds share in the subject property is concerned.

On 12 September 2000, the RTC rendered its Decision reversing the MCTC Decision dated 6 April 1998. The RTC adjudged respondents, as well as the other heirs of Martin Maglunob, as the lawful owners and possessors of the entire subject property. The RTC decreed:

WHEREFORE, judgment is hereby rendered as follows:

1) The appealed [D]ecision is REVERSED;

2) [Herein respondents] and the other heirs of Martin Maglunob are declared the lawful owners and possessors of the whole [subject property] as described in Paragraph 2 of the [C]omplaint, as against the [herein petitioner and her husband].

3) [Petitioner and her husband] are ordered to immediately turn over possession of the [subject property] to the [respondents] and the other heirs of Martin Maglunob; and

4) [Petitioner and her husband] are ordered to pay [respondents] attorney's fees of ₱5,000.00, other litigation expenses of ₱5,000.00, moral damages of ₱10,000.00 and exemplary damages of ₱5,000.00.[14]

Petitioner and her husband filed before the RTC, on 26 September 2000, a Motion for New Trial or Reconsideration[15] on the ground of newly discovered evidence consisting of a Deed of Acceptance[16] dated 23 September 2000, and notice[17]

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[14] *Rollo*, pp. 104-105.

[15] CA *rollo*, pp. 15-23.

[16] In the RTC Decision dated 12 September 2000, the RTC treated the Affidavit executed by Esperanza in favor of the petitioner and her husband as a Donation because the intent of Esperanza in executing such Affidavit is to donate the subject property to the petitioner and her husband.

[17] CA *rollo*, pp. 25-26.

of the same, which were both made by the petitioner, for herself and in behalf of her husband,[18] during the lifetime of Esperanza. In the RTC Order[19] dated 2 May 2001, however, the RTC denied the aforesaid Motion for New Trial or Reconsideration.

The petitioner and her husband then filed a Petition for Review, under Rule 42 of the 1997 Revised Rules of Civil Procedure, before the Court of Appeals, where the Petition was docketed as CA-G.R. SP No. 64970.

In their Petition before the appellate court, petitioner and her husband raised the following errors committed by the RTC in its 12 September 2000 Decision:

I. It erred in reversing the [D]ecision of the [MCTC];

II. It erred in declaring the [herein respondents] and the other heirs of Martin Maglunob as the lawful owners and possessors of the whole [subject property];

III. It erred in declaring [OCT] No. CLOA-1748 in the name of [herein petitioner] Elvie T. Arangote as null and void;

IV. It erred in denying [petitioner and her husband's] [M]otion for [N]ew [T]rial or [R]econsideration dated [26 September 2000; and

V. It erred in not declaring the [petitioner and her husband] as possessors in good faith.[20]

On 27 October 2006, the Court of Appeals rendered a Decision denying the Petition for Review of petitioner and her husband and affirming the RTC Decision dated 12 September 2000. Petitioner and her husband's subsequent Motion for Reconsideration was similarly denied by the Court of Appeals in its Resolution dated 29 June 2007.

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[18] The Deed of Acceptance was signed only by the petitioner. In the said Deed of Acceptance, however, petitioner accepted the donation not only for herself but also in behalf of her husband.

[19] CA *rollo*, p. 28.

[20] *Id.* at 42.

Hence, petitioner[21] now comes before this Court raising in her Petition the following issues:

> I. Whether the [RTC] acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it declared the [petitioner and her husband's title to the subject property] null and void;
>
> II. Whether the [RTC] acted with grave abuse of discretion amounting to lack of jurisdiction when it declared the Affidavit of Quitclaim null and void; and
>
> III. Whether the [RTC] and the Honorable Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it rejected petitioner's claim as possessors (sic) in good faith, hence, entitled to the rights provided in [Article] 448 and [Article] 546 of the Civil Code.[22]

Petitioner contends that the aforesaid OCT No. CLOA-1748 was issued in her name on 26 March 1993 and was registered in the Registry of Deeds of Aklan on 20 April 1993. From 20 April 1993 until the institution of Civil Case No. 156 on 10 June 1994 before the MCTC, more than one year had already elapsed. Considering that a Torrens title can only be attacked within one year after the date of the issuance of the decree of registration on the ground of fraud and that such attack must be through a direct proceeding, it was an error on the part of the RTC and the Court of Appeals to declare OCT No. CLOA-1748 null and void.

Petitioner additionally posits that both the RTC and the Court of Appeals committed a mistake in declaring null and void the

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[21] On 21 April 1994, Ray Mars E. Arangote, herein petitioner Elvira T. Arangote's husband, executed a Special Power of Attorney in her favor to represent him in any proceedings involving the subject property. The case before the lower courts, however, was still entitled *Sps. Ray Mars E. Arangote and Elvira T. Arangote v. Sps. Martin Maglunob and Lourdes S. Maglunob and Romeo Salido*. But, when the case was elevated to this Court, it was only Elvira T. Arangote who stood as petitioner.

[22] In petitioner's Memorandum she stated almost the same issues she had mentioned in her Petition before the Court of Appeals. (*Rollo*, p. 14.)

Affidavit dated 9 June 1986 executed by Esperanza, waiving all her rights and interest over the subject property in favor of petitioner and her husband. Esperanza's Affidavit is a valid and binding proof of the transfer of ownership of the subject property in petitioner's name, as it was also coupled with actual delivery of possession of the subject property to petitioner and her husband. The Affidavit is also proof of good faith on the part of petitioner and her husband.

Finally, petitioner argues that, assuming for the sake of argument, that Esperanza's Affidavit is null and void, petitioner and her husband had no knowledge of any flaw in Esperanza's title when the latter relinquished her rights to and interest in the subject property in their favor. Hence, petitioner and her husband can be considered as possessors in good faith and entitled to the rights provided under Articles 448 and 546 of the Civil Code.

This present Petition is devoid of merit.

It is a hornbook doctrine that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying. It is not a function of this Court to analyze and weigh evidence by the parties all over again. This Court's jurisdiction is, in principle, limited to reviewing errors of law that might have been committed by the Court of Appeals.[23] This rule, however, is subject to several exceptions,[24] one of which is present in this case, *i.e.*, when the factual findings of the Court of Appeals and the trial court are contradictory.

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[23] *Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction and Development Corporation*, G.R. No. 141715, 12 October 2005, 472 SCRA 445, 451.

[24] Recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the finding of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues

In this case, the findings of fact of the MCTC as regards the origin of the subject property are in conflict with the findings of fact of both the RTC and the Court of Appeals. Hence, this Court will have to examine the records to determine first the true origin of the subject property and to settle whether the respondents have the right over the same for being co-heirs and co-owners, together with their grand aunt, Esperanza, before this Court can resolve the issues raised by the petitioner in her Petition.

After a careful scrutiny of the records, this Court affirms the findings of both the RTC and the Court of Appeals as regards the origin of the subject property and the fact that respondents, with their grand aunt Esperanza, were co-heirs and co-owners of the subject property.

The records disclosed that the subject property was part of a parcel of land[25] situated in Maloco, Ibajay, Aklan, consisting of 7,176 square meters and commonly owned in equal shares by the siblings Pantaleon Maglunob (Pantaleon) and Placida Maglunob-Sorrosa (Placida). Upon the death of Pantaleon and Placida, their surviving and legal heirs executed a Deed of Extrajudicial Settlement and Partition of Estate in July 1981,[26]

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of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349, 1356-1357 [2000]; *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1243 [2000]; *Commissioner of Internal Revenue v. Embroidery and Garments Industries [Phils.], Inc.*, 364 Phil. 541, 546-547 [1999]; *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 [1998]; *Almendrala v. Ngo*, G.R. No. 142408, 30 September 2005, 471 SCRA 311, 322.)

[25] It consists of 7,176 square meters.

[26] CA *rollo*, pp. 161-164.

however, the Deed was not notarized. Considering that Pantaleon died without issue, his one-half share in the parcel of land he co-owned with Placida passed on to his four siblings (or their respective heirs, if already deceased), namely: Placida, Luis, Martin I, and Victoria, in equal shares.

According to the aforementioned Deed of Extrajudicial Settlement and Partition of Estate, the surviving and legal heirs of Pantaleon and Placida agreed to have the parcel of land commonly owned by the siblings declared for real property tax purposes in the name of Victorino Sorrosa (Victorino), Placida's husband. Thus, Tax Declarations No. 5988 (1942),[27] No. 6200 (1945)[28] and No. 7233 (1953)[29] were all issued in the name of Victorino.

Since Martin I already passed away when the Deed of Extrajudicial Settlement and Partition of Estate was executed, his heirs[30] were represented therein by Esperanza. By virtue of the said Deed, Martin I received as inheritance a portion of the parcel of land measuring 897 square meters.

After the death of Victorino, his heirs[31] executed another Partition Agreement on 29 April 1985, which was notarized on the same date. The Partition Agreement mentioned four parcels of land. The subject property, consisting of a portion of the consolidated parcels 1, 2, and 3, and measuring around 982 square meters, was allocated to Esperanza. In comparison, the property given to Esperanza under the Partition Agreement is bigger than the one originally allocated to her earlier under the Deed of Extrajudicial Settlement and Partition of Estate dated

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[27] *Id.* at 166.

[28] *Id.* at 170.

[29] *Id.* at 172.

[30] The heirs of Martin I other than the respondents are the other great-grandchildren of Martin I, namely: Jerry, Benita, Feliciano, Andrew, Abdon, Gilbert, Enrique, Tomas, Donato, Felicidad, and Prescila, all surnamed Maglunob.

[31] His cousins, son, granddaughters, and grandsons.

July 1981, which had an area of only 897 square meters. It may be reasonably assumed, however, that the subject property, measuring 982 square meters, allocated to Esperanza under the Partition Agreement dated 29 April 1985, is already inclusive of the smaller parcel of 897 square meters assigned to her under the Deed of Extrajudicial Settlement and Partition of Estate dated July 1981. As explained by the RTC in its 12 September 2000 Decision:

> The [subject property] which is claimed by the [herein petitioner and her husband] and that which is claimed by the [herein respondents] are one and the same, the difference in area and technical description being due to the repartition and re-allocation of the parcel of land originally co-owned by Pantaleon Maglunob and his sister Placida Maglunob and subsequently declared in the name of [Victorino] under Tax Declaration No. 5988 of 1949.[32]

It is clear from the records that the subject property was not Esperanza's exclusive share, but also that of the other heirs of her father, Martin I. Esperanza expressly affixed her thumbmark to the Deed of Extrajudicial Settlement of July 1981 not only for herself, but also on behalf of the other heirs of Martin I. Though in the Partition Agreement dated 29 April 1985 Esperanza affixed her thumbmark without stating that she was doing so not only for herself, but also on behalf of the other heirs of Martin I, this does not mean that Esperanza was already the exclusive owner thereof. The evidence shows that the subject property is the share of the heirs of Martin I. This is clear from the sketch[33] attached to the Partition Agreement dated 29 April 1985, which reveals the proportionate areas given to the heirs of the two siblings, Pantaleon and Placida, who were the original owners of the whole parcel of land[34] from which the subject property was taken.

Further, it bears emphasis that the Partition Agreement was executed by and among the son, grandsons, granddaughters

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[32] *Rollo*, p. 103.

[33] CA *rollo*, p. 147.

[34] It consists of 7,176 square meters.

and cousins of Victorino. Esperanza was neither the granddaughter nor the cousin of Victorino, as she was only Victorino's grandniece. The cousin of Victorino is Martin I, Esperanza's father. In effect, therefore, the subject property allotted to Esperanza in the Partition Agreement was not her exclusive share, as she holds the same for and on behalf of the other heirs of Martin I, who was already deceased at the time the Partition Agreement was made.

To further bolster the truth that the subject property was not exclusively owned by Esperanza, the Affidavit she executed in favor of petitioner and her husband on 6 June 1985 was worded as follows:

> That I hereby renounce, relinquish, waive and quitclaim all my rights, **share**, interest and **participation whatsoever** in the [subject property] unto the said Sps. Ray Mars Arangote and Elvira T. Arangote, their heirs, successors, and assigns including the improvement found thereon;[35]

Logically, if Esperanza fully owned the subject property, she would have simply waived her rights to and interest in the subject property, without mentioning her "share" and "participation" in the same. By including such words in her Affidavit, Esperanza was aware of and was limiting her waiver, renunciation, and quitclaim to her one-third share and participation in the subject property.

Going to the issues raised by the petitioner in this Petition, this Court will resolve the same concurrently as they are interrelated.

In this case, the petitioner derived her title to the subject property from the notarized Affidavit executed by Esperanza, wherein the latter relinquished her rights, share, interest and participation over the same in favor of the petitioner and her husband.

A careful perusal of the said Affidavit reveals that it is not what it purports to be. Esperanza's Affidavit is, in fact, a Donation.

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[35] CA *rollo*, p. 53.

Esperanza's real intent in executing the said Affidavit was to donate her share in the subject property to petitioner and her husband.

As no onerous undertaking is required of petitioner and her husband under the said Affidavit, the donation is regarded as a pure donation of an interest in a real property covered by Article 749 of the Civil Code.[36] Article 749 of the Civil Code provides:

> Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.
>
> The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.
>
> If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

From the aforesaid provision, there are three requisites for the validity of a simple donation of a real property, to wit: (1) it must be made in a public instrument; (2) it must be accepted, which acceptance may be made either in the same Deed of Donation or in a separate public instrument; and (3) if the acceptance is made in a separate instrument, the donor must be notified in an authentic form, and the same must be noted in both instruments.

This Court agrees with the RTC and the Court of Appeals that the Affidavit executed by Esperanza relinquishing her rights, share, interest and participation over the subject property in favor of the petitioner and her husband suffered from legal infirmities, as it failed to comply with the aforesaid requisites of the law.

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[36] *Supra* note 25.

In *Sumipat v. Banga*,[37] this Court declared that title to immovable property does not pass from the donor to the donee by virtue of a Deed of Donation **until and unless it has been accepted in a public instrument and the donor duly notified thereof**. The acceptance may be made in the very same instrument of donation. If the acceptance does not appear in the same document, it must be made in another. Where the Deed of Donation fails to show the acceptance, or where the formal notice of the acceptance, made in a separate instrument, is either not given to the donor or else not noted in the Deed of Donation and in the separate acceptance, **the donation is null and void**.[38]

In the present case, the said Affidavit, which is tantamount to a Deed of Donation, met the first requisite, as it was notarized; thus, it became a public instrument. Nevertheless, it failed to meet the aforesaid second and third requisites. The acceptance of the said donation was not made by the petitioner and her husband either in the same Affidavit or in a separate public instrument. As there was no acceptance made of the said donation, there was also no notice of the said acceptance given to the donor, Esperanza. **Therefore, the Affidavit executed by Esperanza in favor of petitioner and her husband is null and void**.

The subsequent notarized Deed of Acceptance[39] dated 23 September 2000, as well as the notice[40] of such acceptance, executed by the petitioner did not cure the defect. Moreover, it was only made by the petitioner several years after the Complaint was filed in court, or when the RTC had already rendered its Decision dated 12 September 2000, although it was still during Esperanza's lifetime. Evidently, its execution was a mere afterthought, a belated attempt to cure what was a defective donation.

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[37] G.R. No. 155810, 13 August 2004, 436 SCRA 521.

[38] *J.L.T. Agro, Inc. v. Balansag*, G.R. No. 141882, 11 March 2005, 453 SCRA 211, 233-234.

[39] CA *rollo*, p. 24.

[40] *Id.* at 25-26.

It is true that the **acceptance of a donation may be made at any time during the lifetime of the donor**. And granting *arguendo* that such acceptance may still be admitted in evidence on appeal, **there is still need for proof that a formal notice of such acceptance was received by the donor and noted in both the Deed of Donation and the separate instrument embodying the acceptance**.[41] At the very least, this last legal requisite of annotation in both instruments of donation and acceptance was not fulfilled by the petitioner. Neither the Affidavit nor the Deed of Acceptance bears the fact that Esperanza received notice of the acceptance of the donation by petitioner. For this reason, even Esperanza's one-third share in the subject property cannot be adjudicated to the petitioner.

With the foregoing, this Court holds that the RTC and the Court of Appeals did not err in declaring null and void Esperanza's Affidavit.

The next issue to be resolved then is whether the RTC, as well as the Court of Appeals, erred in declaring OCT No. CLOA-1748 in the name of petitioner and her husband null and void.

Again, this Court answers the said issue in the negative.

Section 48 of Presidential Decree No. 1529 states:

> SEC. 48. *Certificate not subject to collateral attack.*— A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

Such proscription has long been enshrined in Philippine jurisprudence. The judicial action required to challenge the validity of title is a direct attack, not a collateral attack.[42]

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[41] *Lagazo v. Court of Appeals,* 350 Phil. 449, 462 (1998).

[42] *Natalia Realty Corporation v. Vallez,* G.R. Nos. 78290-94, 23 May 1989, 173 SCRA 534, 542; *Cimafranca v. Intermediate Appellate Court,* G.R. No. 68687, 31 January 1987, 147 SCRA 611, 621; *Barrios v. Court of Appeals*, 168 Phil. 587, 595 (1977); *Magay v. Estanislao*, G.R. No. L-28975, 27 February 1976, 69 SCRA 456, 458.

The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void**.[43]

A counterclaim is considered a new suit in which the defendant is the plaintiff and the plaintiff in the complaint becomes the defendant. It stands on the same footing as, and is to be tested by the same rules as if it were, an independent action.[44]

In their Answer to the Complaint for Quieting of Title filed by the petitioner and her husband before the MCTC, respondents included therein a Counterclaim wherein they repleaded all the material allegations in their affirmative defenses, the most essential of which was their claim that petitioner and her husband — by means of fraud, undue influence and deceit — were able to make their grand aunt, Esperanza, who was already old and illiterate, affix her thumbmark to the Affidavit, wherein she renounced, waived, and quitclaimed all her rights and interest over the subject property in favor of petitioner and her husband. In addition, respondents maintained in their Answer that as petitioner and her husband were not tenants either of Esperanza or of the respondents, the DAR could not have validly issued in favor of petitioner and her husband OCT No. CLOA-1748. Thus, the respondents prayed, in their counterclaim in Civil Case No. 156 before the MCTC, that OCT No. CLOA-1748 issued in the name of petitioner, married to Ray Mars E. Arangote, be declared null and void, insofar as their two-thirds shares in the subject property are concerned.

It is clear, thus, that respondents' Answer with Counterclaim was a direct attack on petitioner's certificate of title. Furthermore,

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[43] *Leyson. v. Bontuyan,* G.R. No. 156357, 18 February 2005, 453 SCRA 94, 112.

[44] *Supra* note 34.

since all the essential facts of the case for the determination of the validity of the title are now before this Court, to require respondents to institute a separate cancellation proceeding would be pointlessly circuitous and against the best interest of justice.

Esperanza's Affidavit, which was the sole basis of petitioner's claim to the subject property, has been declared null and void. Moreover, petitioner and her husband were not tenants of the subject property. In fact, petitioner herself admitted in her Complaint filed before the MCTC that her husband is out of the country, rendering it impossible for him to work on the subject property as a tenant. Instead of cultivating the subject property, petitioner and her husband possessed the same by constructing a house thereon. Thus, it is highly suspicious how the petitioner was able to secure from the DAR a Certificate of Land Ownership Award (CLOA) over the subject property. The DAR awards such certificates to the grantees only if they fulfill the requirements of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Program (CARP).[45] Hence, the RTC and the Court of Appeals did not err in declaring null and void OCT No. CLOA-1748 in the name of the petitioner, married to Ray Mars E. Arangote.

Considering that Esperanza died without any compulsory heirs and that the supposed donation of her one-third share in the subject property per her Affidavit dated 9 June 1985 was already declared null and void, Esperanza's one-third share in the subject property passed on to her legal heirs, the respondents.

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[45] The basic requirements under Republic Act No. 6657 in order that the Certificate of Land Ownership may be awarded to the applicant are: (1) he/she must be a qualified beneficiary, *i.e.*, he/she she must be an agricultural lessee and share tenant, regular farmworker, seasonal farmworkers, or any other farmworker, actual tiller or occupant of a public land, collective or cooperative of the above beneficiary, or any other person directly working on the land; and (2) he/she must have willingness, attitude, and ability to cultivate and make the land as productive as possible (Section 22, Republic Act No. 6657).

As petitioner's last-ditch effort, she claims that she is a possessor in good faith and, thus, entitled to the rights provided for under Articles 448 and 546 of the Civil Code.

This claim is untenable.

The Civil Code describes a possessor in good faith as follows:

> Art. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
>
> He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.
>
> Mistake upon a doubtful or difficult question of law may be the basis of good faith.
>
> Art. 1127. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.

Possession in good faith ceases from the moment defects in the title are made known to the possessor by extraneous evidence or by a suit for recovery of the property by the true owner. Every possessor in good faith becomes a possessor in bad faith from the moment he becomes aware that what he believed to be true is not so.[46]

In the present case, when respondents came to know that an OCT over the subject property was issued and registered in petitioner's name on 26 March 1993, respondents brought a Complaint on 7 August 1993 before the *Lupon* of *Barangay* Maloco, Ibajay, Aklan, challenging the title of petitioner to the subject property on the basis that said property constitutes the inheritance of respondent, together with their grandaunt Esperanza, so Esperanza had no authority to relinquish the entire subject property to petitioner. From that moment, the good faith of the petitioner had ceased.

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[46] *Ballesteros v. Abion*, G.R. No. 143361, 9 February 2006, 482 SCRA 23, 34-35.

Petitioner cannot be entitled to the rights under Articles 448 and 546 of the Civil Code, because the rights mentioned therein are applicable only to builders in good faith and not to possessors in good faith.

Moreover, the petitioner cannot be considered a builder in good faith of the house on the subject property. In the context that such term is used in particular reference to Article 448 of the Civil Code, **a builder in good faith is one who, not being the owner of the land, builds on that land, believing himself to be its owner and unaware of any defect in his title or mode of acquisition**.[47]

The various provisions of the Civil Code, pertinent to the subject, read:

> Article 448. The owner of the land on which anything has been built, sown, or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such a case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.
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> Article 449. He who builds, plants, or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.
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> Article 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

Under the foregoing provisions, the builder in good faith can compel the landowner to make a choice between appropriating

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[47] *Philippine National Bank v. De Jesus*, 458 Phil. 454, 459 (2003).

the building by paying the proper indemnity or obliging the builder to pay the price of the land. The choice belongs to the owner of the land, a rule that accords with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to instead remove it from the land. In order, however, that the builder can invoke that accruing benefit and enjoy his corresponding right to demand that a choice be made by the landowner, he should be able to prove good faith on his part.[48]

Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[49]

In this case, the subject property waived and quitclaimed by Esperanza to the petitioner and her husband in the Affidavit was only covered by a tax declaration in the name of Esperanza. Petitioner did not even bother to look into the origin of the subject property and to probe into the right of Esperanza to relinquish the same. Thus, when petitioner and her husband built a house thereon in 1989 they cannot be considered to have acted in good faith as they were fully aware that when Esperanza executed an Affidavit relinquishing in their favor

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[48] *Leyson. v. Bontuyan, supra* note 43 at 113.

[49] *Id*.

the subject property the only proof of Esperanza's ownership over the same was a mere tax declaration. This fact or circumstance alone was enough to put the petitioner and her husband under inquiry. Settled is the rule that a tax declaration does not prove ownership. It is merely an *indicium* of a claim of ownership. Payment of taxes is not proof of ownership; it is, at best, an *indicium* of possession in the concept of ownership. Neither tax receipts nor a declaration of ownership for taxation purposes is evidence of ownership or of a right to possess realty when not supported by other effective proofs.[50]

With the foregoing, the petitioner is not entitled to the rights under Articles 448 and 546 as the petitioner is not a builder and possessor in good faith.

WHEREFORE, premises considered, the instant Petition is hereby *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 64970, dated 27 October 2006 and 29 June 2007, respectively, affirming the RTC Decision dated 12 September 2000 in Civil Case No. 5511 and declaring the respondents the lawful owners and possessors of the subject property are hereby *AFFIRMED*. No costs.

SO ORDERED.

Quisumbing, Austria-Martinez (Acting Chairperson), Nachura,* and *Peralta, JJ.,* concur.

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[50] *De Vera-Cruz v. Miguel*, G.R. No. 144103, 31 August 2005, 468 SCRA 506, 522.

[*] Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

THIRD DIVISION

[G.R. No. 180334. February 18, 2009]

VIRGILIO V. QUILESTE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; SANDIGANBAYAN; HAS EXCLUSIVE APPELLATE JURISDICTION OVER THE FINAL JUDGMENT OF THE TRIAL COURT. — x x x Upon Quileste's conviction by the RTC, his remedy should have been an appeal to the Sandiganbayan, pursuant to Presidential Decree No. (PD) No. 1606, as amended by Republic Act (R.A.) No. 7975 and R.A. No. 8249, specifically Section 4 thereof, *viz.*: Section 4. *Jurisdiction.* — x x x In cases where none of the accused are occupying positions corresponding to Salary Grade "27" or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in *Batas Pambansa Blg.* 129, as amended. **The *Sandiganbayan* shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided**. This is complemented by the Revised Internal Rules of the Sandiganbayan, Part III, Rule XI, Section 1, which reads – Section 1. *Ordinary Appeal.* — Appeal to the Sandiganbayan from a decision rendered by a Regional Trial Court in the exercise of its original jurisdiction shall be by ordinary appeal under Rules 41 and 44 of the 1997 Rules of Civil Procedure or Rule 122 and 124 of the Rules of Criminal Procedure, as amended, as the case may be.

2. ID.; CRIMINAL PROCEDURE; APPEALS; RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE WHICH MAY BE EXERCISED ONLY IN THE MANNER PROVIDED FOR BY LAW; CASE AT BAR. — [T]he right to appeal is neither a natural right nor a part of due process, it being merely a statutory privilege which may be exercised only in the manner provided

for by law. In this case, Quileste should have appealed the RTC Decision of conviction to the Sandiganbayan within 15 days from promulgation of the judgment or from notice of the final order appealed from. By lodging his appeal with the CA which, in turn, erred in taking cognizance of the same, although it dismissed the appeal on technical grounds, the period within which to appeal to the proper court – the Sandiganbayan – lapsed. Thus, Quileste lost his right to appeal. Consequently, he cannot come before this Court to question the dismissal of his appeal, the RTC Decision having become final and executory upon the expiration of the period to appeal.

APPEARANCES OF COUNSEL

Jose V. Begil, Jr. for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Resolution[2] dated June 8, 2007, dismissing the appeal of petitioner Virgilio Quileste (Quileste) and the Resolution[3] dated September 21, 2007 denying his Motion for Reconsideration.

The antecedents follow –

Quileste was charged with Malversation in an Information filed by the Office of the Ombudsman-Mindanao which reads —

That on or about 25 June 2002, or sometime prior or subsequent thereto, in Dapa, Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused Virgilio V. Quileste, a low-ranking public officer, being then a Revenue Collection Officer II of the Bureau of Internal Revenue, upon

[1] *Rollo,* pp. 17-28.

[2] *Id.* at 31-32.

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

examination of the cash and accounts from the accountable forms, and by reason of his office is accountable for said public funds under his control and custody, did then and there fail to produce and to have fully forthcoming upon official demand a cash shortage in the total amount of TWO HUNDRED SIXTY-FIVE THOUSAND SIX HUNDRED SIX PESOS & 26/100 (₱265,606.26), which amount he willfully, unlawfully and feloniously took and misappropriated for his own personal use and benefit to the damage and prejudice of the Government and to public interest.

Contrary to Law.[4]

The case, docketed as Criminal Case No. 2354, was raffled to the Regional Trial Court (RTC), Branch 31, Dapa, Surigao del Norte. During the arraignment, he pleaded "Not Guilty."

After pre-trial and trial, the RTC found Quileste guilty beyond reasonable doubt of Malversation. The dispositive portion of the Decision[5] dated June 13, 2006 reads –

WHEREFORE, the Court finds accused VIRGILIO V. QUILESTE, GUILTY beyond reasonable doubt as principal of the crime of MALVERSATION as defined and penalized under Article 217 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of reimbursement of funds misappropriated, being analogous to voluntary surrender hereby sentences the accused Virgilio V. Quileste to suffer an indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, as maximum, both of *Reclusion Temporal*; to suffer the penalty of perpetual special disqualification; and to pay the costs.

No fine is hereby adjudge (sic) in view of the payment or reimbursement by the accused of the shortage in the amount of ₱265,606.66.

SO ORDERED.[6]

Aggrieved, Quileste appealed to the CA. However, in its Resolution dated June 8, 2007, the CA dismissed outright the appeal because Quileste failed to furnish the Office of the Solicitor

[4] *Id*. at 33.

[5] *Id*. at 33-40.

[6] *Id*. at 40.

General (OSG) a copy of his Motion for Extension to File Appellant's Brief and his Appellant's Brief in violation of Section 3, Rule 124[7] of the Rules of Court.

Quileste moved to reconsider the June 8, 2007 Resolution. The motion was denied by the CA in its Resolution dated September 21, 2007 on the finding that, despite the allegation that a copy of the motion was served upon the OSG via registered mail, the registry receipt was not attached to the motion, in violation of Sections 5[8] and 13[9] of Rule 13 of the Rules of Court. Furthermore, it appeared that the affidavit of service attached to the motion to rectify the defect in the appellant's brief showed that the same was filed via registered mail and the registry receipt was not attached to the said affidavit. Neither was there an explanation why registered mail was resorted to in the service of the appellant's brief upon the OSG, also in violation of Sections 11[10] and 13 of the same Rule.

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[7] Sec. 3. *When brief for the appellant to be filed.* — Within thirty (30) days from receipt by the appellant or his counsel of the notice from the clerk of court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record, **the appellant shall file seven (7) copies of his brief with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellee**. (Emphasis supplied.)

[8] SEC. 5. *Modes of service.* — Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

[9] SEC. 13. *Proof of service.* — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[10] SEC. 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must b e accompanied by a written explanation

Hence, this petition anchored on the sole issue that his appeal was dismissed merely on a technicality for failure to furnish a copy of his brief to the OSG despite a showing of substantial compliance with the requirement. According to Quileste, the CA dwelt on technicalities without considering the merit of his appeal questioning the failure of the prosecution to present in evidence the cash book, which was the basis of the finding of shortage against him, and other documentary evidence relevant to the audit conducted on him as an accountable officer.

The petition necessarily fails.

It may be recalled that this case involves malversation of public funds, punishable under Article 217 of the Revised Penal Code, committed by a low-ranking public officer (with salary grade below SG 27). Thus the case was correctly filed with, and tried by, the RTC, the court that has exclusive original jurisdiction over the case. Upon Quileste's conviction by the RTC, his remedy should have been an appeal to the Sandiganbayan, pursuant to Presidential Decree No. (PD) No. 1606,[11] as amended by Republic Act (R.A.) No. 7975 and R.A. No. 8249, specifically Section 4 thereof, *viz.*:

> Section 4. *Jurisdiction.* — x x x
>
> In cases where none of the accused are occupying positions corresponding to Salary Grade "27" or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in *Batas Pambansa Blg.* 129, as amended.
>
> **The *Sandiganbayan* shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.**[12]

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why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[11] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and For Other Purposes.

[12] Emphasis supplied.

This is complemented by the Revised Internal Rules of the Sandiganbayan, Part III, Rule XI, Section 1, which reads –

> Section 1. *Ordinary Appeal.* — Appeal to the Sandiganbayan from a decision rendered by a Regional Trial Court in the exercise of its original jurisdiction shall be by ordinary appeal under Rules 41 and 44 of the 1997 Rules of Civil Procedure or Rule 122 and 124 of the Rules of Criminal Procedure, as amended, as the case may be.

We reiterate that the right to appeal is neither a natural right nor a part of due process, it being merely a statutory privilege which may be exercised only in the manner provided for by law.[13] In this case, Quileste should have appealed the RTC Decision of conviction to the Sandiganbayan within 15 days from promulgation of the judgment or from notice of the final order appealed from.[14] By lodging his appeal with the CA which, in turn, erred in taking cognizance of the same, although it dismissed the appeal on technical grounds, the period within which to appeal to the proper court – the Sandiganbayan – lapsed. Thus, Quileste lost his right to appeal. Consequently, he cannot come before this Court to question the dismissal of his appeal, the RTC Decision having become final and executory upon the expiration of the period to appeal.

In this light, it would be pointless to further discuss the merits of this case.

WHEREFORE, the petition is *DENIED*. Costs against petitioner.

SO ORDERED.

Quisumbing, Austria-Martinez (Acting Chairperson),** Chico-Nazario,* and *Peralta, JJ.,* concur.

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[13] *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 402.

[14] Revised Rules on Criminal Procedure, Rule 122, Sec. 6.

* Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

** In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

THIRD DIVISION

[G.R. No. 180666. February 18, 2009]

LEODEGARIO R. BASCOS, JR. and ELEAZAR B. PAGALILAUAN, *petitioners, vs.* **ENGR. JOSE B. TAGANAHAN and OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; DEFINED. — In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

2. ID.; APPEALS.; FINDINGS OF FACT OF THE OFFICE OF THE OMBUDSMAN ARE CONCLUSIVE WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE ACCORDED DUE RESPECT AND WEIGHT, ESPECIALLY WHEN THEY ARE AFFIRMED BY THE COURT OF APPEALS; EXCEPTION. — Elementary is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result. Although there are exceptions to this rule, we find the same to be inapplicable to the instant case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; DEFINED. — As an administrative offense, dishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. It is the **concealment or distortion of truth in a matter of fact** relevant to one's office or connected with the performance of his duties. Dishonesty is considered as a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Section 52(A)(1), Rule IV of Resolution No. 99-1936.

4. ID.; ID.; ID.; ID.; PETITIONERS' ACTS OF SIGNING CERTIFICATIONS CONTAINING UNTRUTHFUL STATEMENTS CONSTITUTE DISHONESTY; PENALTY. — In fine, the confluence of the foregoing circumstances leads to the inevitable conclusion that petitioners Bascos and Pagalilauan, in signing certifications that contained untruthful statements, were indeed guilty of acts of dishonesty in the exercise of their public functions, thus, warranting their dismissal from the service in accordance with Section 52(A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

APPEARANCES OF COUNSEL

Ferrer & Associates Law Office for petitioners.

Habitan Ferrer Chan Tagapan Patriarca & Associates for J. Taganahan.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court challenging the Decision[2] dated 28

[1] *Rollo*, pp. 25-42.

[2] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso, concurring; *rollo*, pp. 43-66.

May 2007 and the Resolution[3] dated 20 November 2007 of the Court of Appeals in CA-G.R. SP No. 92533. In its assailed Decision, the appellate court affirmed the Decision[4] dated 19 July 2005 and the Order[5] dated 20 October 2005 of the Office of the Ombudsman in OMB-C-A-02-0379-I, which found herein petitioners Leodegario R. Bascos, Jr. (Bascos) and Eleazar B. Pagalilauan (Pagalilauan) guilty of Dishonesty and sentenced them to a penalty of dismissal from service. The assailed Resolution of the appellate court denied petitioners' Motion for Reconsideration of its earlier Decision.

The antecedents of the case, both factual and procedural, are set forth hereunder.

The Contract

On 14 December 2000, a **Contract for the Supply, Delivery, Installation and Commissioning of Two (2) Units [of] 2.5 Tons Per Hour Rice Mill[s]**[6] (Contract) was entered into by the National Food Authority (NFA), represented by Acting Administrator Domingo F. Panganiban, as purchaser, and Alheed International Trading Corporation (Alheed Corp.), represented by its President Herculano C. Co, Jr., as supplier.

The Contract provided, *inter alia*, that Alheed Corp. shall supply, deliver, install, test and commission two units of rice mills, including their standard tools, equipment and accessories, for a total contract price of ₱19,398,042.00. Seventy percent (70%) of the contract price shall be paid by the NFA upon the delivery of the equipment at the site, and the submission of delivery receipt(s)/original invoice(s) and of proof of payment of customs duties; while the remaining thirty percent (30%) shall be paid after the installation, testing, and commissioning of the equipment, and the issuance by the appropriate NFA

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[3] *Rollo*, p. 67.

[4] *Id.* at 120-150.

[5] *Id.* at 165-178.

[6] Records, pp. 128-133.

Field Office of a **Certificate of Final Acceptance** upon the submission by Alheed Corp. of other documents which may be required. The requirements which Alheed Corp. must submit, before the appropriate NFA Field Office shall issue the Certificate of Final Acceptance, were identified as follows:

(1) Certificate of Final Acceptance by the Technical Services Directorate [TSD][7];

(2) Certificate of conformity to specifications and inspection report by the TSD Project Engineer at the site;

(3) Guarantee Bond posted by Alheed International Trading Corporation in favor of NFA in the amount equivalent to 10% of the Contract Price with a statement under oath of full payment of premium which shall be effective within a period of one year from the final acceptance.

The payments to be made in favor of Alheed Corp. under the Contract shall be subject to NFA accounting and auditing rules and regulations.

The Contract further provided that the labor materials, equipment, delivery and installation at the site, as well as the testing and commissioning of the rice mills, shall be undertaken by Alheed Corp. at its own account. *Commissioning* was defined therein as the completion of the mechanical and electrical systems of the rice mills, tested with and without load at the appropriate NFA Field Office. The testing with load shall be conducted for at least eight hours of continuous operation for three times.

Special provisions were also incorporated in the Contract. One of these special provisions stated that no substitution of materials or equipment including brand and type shall be made, unless otherwise approved in writing by the purchaser NFA, as represented by its Administrator; and another which provided that the duly authorized representative of the purchaser may, at any time, inspect the basic unit as well as the progress of the installation. Said inspection shall not be interpreted as

[7] In other parts of the records, the Technical Service Directorate of the NFA was referred to as the Technical Services Department.

exempting or diminishing the liability of the supplier Alheed Corp. as provided in the Contract.

Per the Contract, the two rice mills were initially set to be supplied and installed by Alheed Corp. at the NFA grain centers that were being constructed at Talavera, Nueva Ecija and Sablayan, Mindoro Occidental. Instead, the rice mills were eventually installed at San Jose, Occidental Mindoro and Pili, Camarines Sur.

The Complaint-Affidavit

On 23 August 2002, private respondent Jose B. Taganahan (Taganahan), an Engineer-III (with Salary Grade 19) at the TSD of NFA, filed a Complaint-Affidavit[8] with the Office of the Ombudsman in connection with the allegedly anomalous acceptance and full payment of the two rice mills installed in San Jose, Occidental Mindoro and in Pili, Camarines Sur. The Complaint-Affidavit charged (1) herein petitioner Bascos, in his capacity as Director of the TSD (Salary Grade 26); (2) herein petitioner Pagalilauan, in his capacity as the Chief Grains Operations Officer (Salary Grade 24) of the NFA; (3) Tomas R. Escarez (Escarez), in his capacity as Provincial Manager (Salary Grade 24) of the NFA for the province of Occidental Mindoro; and (4) Alheed Corp., represented by its President Heculano C. Co, Jr., with Falsification of Public Documents, violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), violation of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), and Perjury.

Taganahan related that from 30 June to 6 July 2001, he went on an official travel to San Jose, Occidental Mindoro, to conduct the test-milling of a newly installed 2.5 ton per hour (TPH) rice mill. Upon returning to the NFA Central Office in Quezon City, Taganahan submitted on 9 July 2001 a Travel Accomplishment Report[9] to petitioner Bascos, then TSD Director,

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[8] *Rollo*, pp. 68-81.

[9] Records, pp. 16-19.

through Acting Facility Installation and Maintenance Division (FIMD) Chief Ramoncito Padilla. Taganahan reported that: (1) the test milling could not be conducted on the newly installed rice mill because the electric generator at the site broke down during the initial hour of the rice mill operation; (2) some rice mill components which should be installed were either undelivered or uninstalled; and (3) some of the installed rice mill components did not conform with the plans and specifications. Based on the foregoing, Taganahan recommended that the payment of the thirty percent (30%) balance of the contract price of the rice mill be deferred until: (1) the supplier, Alheed Corp., shall have completed the delivery and installation of the rice mill components according to plans and specifications; (2) the rice mill commissioning, through proper milling tests, had been successfully completed; and (3) the training of NFA technicians and other contractual obligations of Alheed Corp. had been fully complied with.

The above violations notwithstanding, petitioners Bascos and Pagalilauan still submitted to the NFA Accounting Department on 3 July 2001 the voucher[10] for the full payment of the rice mill installed at San Jose, Occidental Mindoro. Attached to the voucher were the following allegedly spurious documents, *viz*:

a) Certificate of Inspection[11] dated June 11, 2001 xxx signed by [herein petitioner] Eleazar B. Pagalilauan (who misrepresented himself as a "TSD Engineer," despite the fact that he never passed any board examination for engineers), falsely certifying to the complete installation of [the] contracted [rice mill];

b) Accomplishment Report[12] dated 13 June 2001 xxx prepared by [petitioner] Eleazar B. Pagalilauan (who misrepresented himself this time as "Project Manager," despite the fact that such was not his position or designation), and duly noted by [herein petitioner] Leodegario R. Bascos, Jr., falsely certifying to the alleged 100% delivery and installation of the contracted [rice mill];

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[10] *Id.* at 30.

[11] *Id.* at 31.

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

c) Certificate of Conformity to Specifications[13] dated June 14, 2001 x x x issued by [petitioner] Leodegario R. Bascos, Jr., falsely attesting to the 100% installation of the [rice mill], and to its conformity with all specifications; and

d) Letter[14] of [Herculano C. Co, Jr.], dated June 05, 2002 xxx, addressed to then NFA Administrator Edgar S. Asuncion, falsely stating that Alheed Corp. had successfully installed and commissioned the Buivanngo [rice mill] at San Jose, Occidental Mindoro, and requesting payment of the 30% balance of the contract amount.

Attached to the voucher were a Certificate of Complete Installation, Commissioning and Final Acceptance,[15] dated 20 July 2001, signed by Escarez as NFA Provincial Manager for Occidental Mindoro, falsely certifying the complete installation and commissioning of the rice mill at San Jose, Occidental Mindoro. On the basis of the aforementioned documents, the check payment for the balance of the contract price of the rice mill was released in favor of Alheed Corp. on 17 August 2001.

Taganahan claimed that the Certification dated 20 July 2001 by Escarez was spurious considering that the latter even sent a radio message[16] to petitioner Bascos on 4 July 2001, stating that the test milling of the rice mill in San Jose, Occidental Mindoro could not proceed as scheduled because the electric generator malfunctioned during the test run. Subsequently, Escarez sent a fax message, dated 26 September 2001 and addressed to Melvin Co of Alheed Corp., which scheduled the commissioning of the said rice mill on 27 to 29 September 2001, or more than two months after Escarez certified that the rice mill was already duly commissioned.

Taganahan asserted that the findings in his report were bolstered by an audit report **IAS No. H-006**[17] dated 6 September

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[13] *Id.* at 34.

[14] *Id.* at 35.

[15] *Id.* at 36-37.

[16] *Id.* at 38.

[17] CA *rollo*, pp. 111-112.

2001 of the Internal Audit Services (IAS) Department of the NFA, submitted to the NFA Administrator, which cited many violations of the Contract and the plans and specifications relative to the supply and installation of the rice mills in question. In reply to the audit report, petitioner Bascos sent a Memorandum[18] dated 22 November 2001 to the NFA Administrator, untruthfully declaring therein that Alheed Corp. had complied with all the requirements of the Contract as certified by TSD Engineers. Taganahan averred, however, that contrary to petitioner Basco's claims, there was actually no issuance from any of the TSD Engineers certifying the completeness of the delivery, installation, and commissioning of the rice mill; hence, petitioner Pagalilauan "unprofessionally and anomalously" signed the needed certifications himself, as "TSD Engineer" in one and as "Project Manager" in another, attesting that the project had been completed.

Insofar as the other rice mill was concerned, Taganahan asseverated that petitioner Pagalilauan inveigled TSD Engineers Bobby Quilit and James Vincent Del Valle to sign the pre-dated certifications of the supposedly complete installation of the rice mill in Pili, Camarines Sur and its conformity to NFA specifications.

Subsequently, the IAS submitted another audit report, IAS No. A-002 dated 7 January 2002, which cited thirteen (13) other violations of the Contract and of the NFA specifications. Taganahan maintained that the second audit report, in effect, confirmed his allegations of the various violations of the Contract committed by Alheed Corp.

On account of the allegations in Taganahan's Complaint-Affidavit, an administrative case for Dishonesty and Grave Misconduct, docketed as OMB-C-A-02-0379-I,[19] was filed against petitioners Bascos and Pagalilauan, as well as Escarez.

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[18] Records, pp. 50-55.

[19] A criminal case for Falsification and Violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (Rep. Act No. 3019), docketed as OMB-C-C-02-0552-I, was likewise filed against petitioners Bascos and Pagalilauan, Escarez and Herculano C. Co, Jr., the President of Alheed Corp.

Decision of the Office of the Ombudsman

On 19 July 2005, the Office of the Ombudsman promulgated its Decision[20] in OMB-C-A-02-0379-I, making the following findings:

> Initially, this Office finds the absence of enough proof to hold the herein respondents responsible for the irregularities committed in the installation of the [rice mill] at Pili, Camarines Sur. Worth mentioning herein is the observation that the certificates relative to the completion of the project thereat were issued by the officials at the NFA Office therein. Hence, the anomaly therein, if any, is the responsibility of the latter.
>
> Viewed therewith, this Office in the instant decision shall deal solely on the alleged irregularities committed in the execution of the project for the installation of [the rice mill] at San Jose, Occidental Mindoro, and in the claimed anomalous full payment of the contract amount to Alheed Corporation.
>
> Significantly, [herein petitioner] Bascos is being held liable herein for the issuance of the Certificate of Conformity to Specifications on June 14, 2001, attesting to the 100% delivery and installation of the [rice mill] as of June 5, 2001, while [herein petitioner] Pagalilauan for his Certificate of Inspection, dated June 11, 2001, certifying to the supply, delivery, installation and commissioning of the [rice mill], and its compliance with the contract specifications, as per the inspection conducted on June 9, 2001, and finally, Escarez for having signed the Certificate of Complete Installation, Commissioning and Final Acceptance, dated July 20, 2001, of Acting Plant Engineer Agosto Quijano in the "Noted" portion thereof.
>
> Ruling on this case, records revealed that [petitioners] Bascos and Pagalilauan in their issuances committed falsification by causing it to appear in their individual certifications that the newly installed [rice mill] at the NFA San Jose Office in issue had been inspected and found in conformity with the NFA approved specifications, knowing fully (sic) well that the supplier, Alheed Corporation, violated certain provisions of the contract and/or committed deviations thereof without the approval of the NFA Administrator.[21] (Emphasis ours.)

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[20] *Rollo*, pp. 120-149.

[21] Records, pp. 140-141.

The Office of the Ombudsman noted more specifically the transgressions committed by petitioners Bascos and Pagalilauan:

> The deficiencies/defects in the project were made known to [herein petitioner] Bascos prior to the release of the full payment to Alheed Corporation on August 17, 2001. Supporting the same was the observation that FIMD Officer-In-Charge Ramoncito Padilla in a letter, dated June 15, 2001, to [petitioner] Bascos submitted the [Travel/ Project Accomplishment Report] of TSD Engineers Carlito Castro and Placido Asprec who supervised the electro-mechanical works and installation of the [rice mill]. Apparently, the undelivered items and some unauthorized deviations from the contract specifications of Alheed Corporation in violation of the contract had been formally reported to [petitioner Bascos]. However, the former instead of preventing further damage to the government still allowed the release of the payment to Alheed Corporation. x x x.
>
> The letter of advise (sic), dated July 16, 2001, of [petitioner] Bascos to Alheed Corporation, informing the latter of the alleged installation of undersized wiring in the [rice mill] subject hereof, and Alheed Corporation's reply-letter thereto of July 17, 2001, explicitly revealed the absence of any correction made therein. Let it be noted that Alheed Corporation in the said letter merely took upon itself the responsibility to answer for any damage which maybe (sic) caused by the alleged undersized wiring. Thus, [the same] can be treated as an express admission of defiance to the contract.
>
> Moreover, the admission (sic) of [herein petitioners] Bascos and Pagalilauan in their counter-affidavits of non-compliance with the test milling requirement for at least eight (8) hours continuous operation for three (3) times as provided in the contract tacitly established the fact that they have full knowledge of the deviations from the NFA approved specifications.
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> x x x x x x x x x
>
> Emphasis is made on the fact that the issuance of the Certificate of Conformity to Specification presupposes actual inspection and testing of the equipment. In the case at bar[,] the discovery of the defects in the contested installation after the issuance thereof clearly revealed absence of actual inspection of the project. Considering the same, therefore, the issuances of [petitioner] Bascos, dated July 14, 2001, and [petitioner] Pagalilauan, dated June 11, 2001, are irregular.

[Petitioner] Pagalilauan's administrative liability herein was even bolstered by the established fact that he acted in two (2) capacities in the preparation and submission of the required documents to facilitate the payment to Alheed Corporation, *i.e.*, as the TSD Engineer in the Certificate of Inspection and as Project Manager in the report on the project completion, the authority to act as such not having been entrenched with sufficient proofs (sic).

Further substantiating the foregoing observation is the undisputed fact that while it is true that the IAS Report No. H-006, dated September 6, 2001, of the NFA Internal Audit Services stating certain deficiencies and/or defects in the implementation of the project in question had been answered by [petitioner] Bascos in his Memorandum to the NFA Administrator, dated November 22, 2001, however, (sic) the subsequent report of the same unit containing the same observations showed that the justifications of respondent Bascos therein did not satisfactorily explain the reported irregularities committed in the execution of the project. Exemplifying the same are the IAS findings contained in its second report, coded as IAS Report No. A-002, dated January 7, 2002, to wit:

"FINDINGS

NON-CONFORMITY WITH SOP GS-PD15

1. Purchase of two units rice mill was not referred to IAS for Technical Inspections.

xxx xxx xxx

Under its Implementing Guidelines, No. 22 of the General Policies of SOPGS-PD15 (sic) states that:

"All purchases/fabrication shall be subject to technical inspection by the Technical Inspection Unit, Internal Audit Services (TIU-IAS) and final acceptance by the requisitioning office."

The contract for the purchase of two units rice mills was consummated and fully paid even without the technical inspection by the [TIU-IAS] in violation of the foregoing provision.

xxx xxx xxx

IAS position is buttressed by the fact that the contract states that all payments shall be subject to NFA accounting and auditing procedures and as such should conform to the expense (sic) mandate of SOP GS-PD15.

x x x x x x x x x

COMPLIANCE WITH CONTRACT AND TECHNICAL SPECIFICATIONS

1. Non-delivery of One (1) Unit Bucket Elevator 140/5m. During the inspection, it was noticed that three (3) units [were] installed at the site. However, when cross checked with the breakdown of the bid at Alhud (sic), item No. 26 Bucket Elevator 140/5m, [showed] an original quantity of four (4) units. Apparently, there was an erasure appearing in the face of the document reflecting therein three (3) units instead of 4 without the corresponding reduction as to the amount.

x x x x x x x x x

3. Change in the dimensions of the Bran Room

The Bran Room dimensions were changed from twelve (12) meters by six (6) meters to ten (10) meters by five (5) meters which change was only approved by the TSD Director and not by the proper approving authority, the Administrator. Likewise, a corresponding reduction in cost should be made.

4. Use of Undersized Wiring

1. [It] was also found out that the wire used for the 40 HP motor of mist polisher CB-2EB and whitener CDE-40A were undersized x x x.

x x x x x x x x x

6. Replacement of One (1) Unit Bran Sieve without prior approval of the Administrator:

TSD approved the request of the supplier to replace the Bran Sieve with Dust Filter Cyclone with Exhauster, which according to them the replacement will improve the efficiency of the rice mill. However, it did not seek prior approval from the Administrator.

7. Non-Compliance with the training requirement under the contract.

Inspection revealed that the required training of NFA concerned personnel has not been undertaken by the supplier.

x x x xxx xxx

11. Non-Conformity with the Grading Section Specification.

x x x xxx xxx

Under NFA Specifications, the grading of rice is by indented cylinder. Two indented cylinder grades is (sic) mounted [atop] the grading tank. x x x.

Based in the as-built plan, there is only one indented cylinder."

xxx xxx xxx

The abovestated (sic), IAS's findings appeared to be unrefuted for failure of [petitioners] Bascos and Pagalilauan to either sufficiently controvert the same or justify the deficiencies found in the project. Hence, it (sic) stand.[22]

According to the Office of the Ombudsman, the actuations of petitioners Bascos and Pagalilauan, as described above, constituted dishonesty:

Before making a pronouncement on the liability of the [petitioners], it is important to make a clear definition of Dishonesty as an administrative offense. Section 8 of Presidential Decree No. 971, adopted by the Civil Service Commission [CSC] in its Resolution No. 97-0799 of January 28, 1997, defined the offense as the "concealment or distortion of the truth in a matter of fact relevant to one's office or connected with the performance of his duties." As further held by the CSC in its Resolution No. 00-0821, dated March 28, 2000, "dishonesty as a censurable conduct assumes greater meaning when the offender is a public officer who is circumscribed with a heavy burden of responsibility to the public, and whose conduct must at all times be impressed with decency, decorum and propriety."

Premised on the observations of this Office and the undisputed findings of the NFA Internal Audit Services, this Office concludes that

[22] *Id.* at 141-146.

[herein petitioners] Bascos and Pagalilauan by issuing the Certificate of Conformity with the Specifications and Certificate of Inspection, respectively, to facilitate the full payment of the contract amount to Alheed Corporation, despite full knowledge of lack of actual inspection conducted on the equipment and its non-conformity with the contract specifications, are liable for Dishonesty. x x x.[23]

However, as regards the alleged liability of Escarez, the Office of the Ombudsman adjudged:

Lastly, on the issuance of the Certificate of Complete Installation, Commissioning and Final Acceptance, dated July 20, 2001 by Plant Engineer Agosto Quijano, this Office is of the considered view that the signing of [Escarez] in the "Noted" portion thereof merely serves as an acknowledgment of the notice given to him on the development in the project. The disputed certification can speak for itself that it was done and issued by another. Good faith can likewise be appreciated in his favor as evidenced by his subsequent acts of informing all concerned, including [herein petitioner] Bascos and Alheed Corporation, on the new schedule for the commissioning of the [rice mill]. Thus, negating intent to conceal the truth. Based thereon, the exoneration of [Escarez] herein is warranted.[24]

In the end, the Office of the Ombudsman decreed:

WHEREFORE, premises considered, and finding [herein petitioners] TSD Director LEODEGARIO R. BASCOS, JR. and Grains Operations Officer ELEAZAR B. PAGALILAUAN, both of the National Food Authority, GUILTY OF DISHONESTY, they should be meted the penalty of DISMISSAL FROM THE SERVICE, pursuant to Section 52 (A) (1) of Rule IV of the Uniform Rules on Administrative Cases.

Finding [Provincial Manager] TOMAS R. ESCAREZ of NFA San Jose, Occidental Mindoro, to be not guilty of the offense charged, the complaint against him is, as it is hereby, DISMISSED.

Let a copy of this Decision be furnished the Office of the Administrator of the National Food Authority for proper implementation upon finality hereof.[25] (Emphasis ours.)

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[23] *Rollo*, pp. 146-147.

[24] *Id.* at 147-148.

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

Petitioners filed an Omnibus Motion for Reconsideration and/or Reinvestigation,[26] but the same was denied by the Office of the Ombudsman in an Order[27] dated 20 October 2005.

Petitioners then filed before the Court of Appeals a Petition for Review[28] under Rule 43 of the Rules of Court, contesting the judgment against them of the Office of the Ombudsman in OMB-C-A-02-0379-I. Their Petition was docketed as CA-G.R. SP No. 92.

In a Resolution[29] dated 18 January 2006, the Court of Appeals dismissed the Petition, inasmuch as its Verification and Certification of Non-Forum Shopping was signed only by petitioner Pagalilauan, and there was no attached document to prove that petitioner Bascos had authorized the former to sign on his behalf.

On 6 February 2006, petitioner Pagalilauan filed a Motion for Reconsideration[30] of the 18 January 2006 Resolution, explaining that his co-petitioner Bascos had gone to the United States of America in the middle of November 2005 to undergo medical check-up and treatment. Petitioner Bascos had not returned since then. When Pagalilauan received, on 7 December 2005, the Order dated 20 October 2005 of the Office of the Ombudsman denying their Omnibus Motion for Reconsideration and/or Reinvestigation, he informed petitioner Bascos of the same only by telephone and other means of communication. Despite the physical absence of petitioner Bascos, petitioner Pagalilauan claimed that the former had a hand in the preparation and the filing of their Petition for Review before the Court of Appeals.

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[26] *Id.* at 151-164.

[27] *Id.* at 165-177.

[28] *Id.* at 179-213.

[29] CA *rollo*, pp. 356-357.

[30] *Id.* at 358-375.

In a Resolution[31] dated 15 February 2006, the Court of Appeals ordered petitioner Pagalilauan to submit, within fifteen (15) days from notice, a written authorization duly executed by petitioner Bascos, empowering petitioner Pagalilauan to execute the Verification and Certification of Non-Forum Shopping in the Petition on Bascos's behalf. The Court of Appeals further required that petitioner Bascos' written authorization be duly authenticated by the proper consular officer of Philippines in the United States of America where he was staying.

On 6 March 2006, petitioners Bascos and Pagalilauan filed their Compliance[32] with the 15 February 2006 Resolution of the Court of Appeals. In lieu of a written authorization, petitioner Bascos himself signed the required Verification and Certification of Non-Forum Shopping, having arrived from the United States of America on 7 February 2006.

Resultantly, in an Order[33] dated 20 March 2006, the Court of Appeals set aside its Resolution dated 18 January 2006 and reinstated the Petition.

Procedurally, the Court of Appeals initially declared that petitioners failed to exhaust administrative remedies before filing their Petition under Rule 43. Section 11 of Republic Act No. 6770[34] states that the Ombudsman has the power of control and supervision over the Offices of the Ombudsmen. Such being the case, the Decision dated 19 July 2005 rendered by the Overall Deputy Ombudsman should have been questioned first before the Ombudsman prior to the filing of a Petition for Review under Rule 43 before the Court of Appeals.

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

[32] *Id.* at 379-389.

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

[34] The Ombudsman Act of 1989. Section 11 thereof provides:

Sec. 11. *Structural Organization*. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said Office.

The Court of Appeals also ruled that the 19 July 2005 Decision of the Office of the Ombudsman was supported by substantial evidence. The appellate court cited with favor the following pieces of evidence that the Office of the Ombudsman considered in its Decision: (1) the Accomplishment Report of TSD Engineers Castro and Asprec, who supervised the electro-mechanical works and installation of the rice mill; (2) the Travel Report prepared by Taganahan dated 9 July 2001; (3) the letter of advise (sic) dated 16 July 2001 of Bascos to Alheed Corp., informing the latter of the alleged installation of undersized wirings, and the reply-letter of Alheed Corp. thereto dated 17 July 2001; (4) the admissions of petitioners Bascos and Pagalilauan in their Counter-Affidavits of non-compliance with the testing requirement for the rice mill of at least eight hours continuous operation for three times, as provided in the Contract; (5) IAS Report No. H-006 dated 6 September 2001; and (6) IAS report No. A-002 dated 7 January 2002.

Thereupon, on 28 May 2007, the Court of Appeals promulgated its assailed decision, affirming the ruling of the Office of the Ombudsman in this wise:

> WHEREFORE, the petition is **DISMISSED**. The assailed Decision of the Office of the Ombudsman dated July 19, 2005 finding petitioners guilty of Dishonesty under Civil Service law and implementing rules and penalizing them with dismissal from service, as well as its Decision dated October 20, 2005 denying herein petitioner's motion for reconsideration, are **AFFIRMED**.[35]

In the assailed Resolution[36] dated 20 November 2007, the Court of Appeals denied the Motion for Reconsideration[37] of petitioners Bascos and Pagalilauan.

Petitioners, thereafter, elevated their case to us *via* the instant Petition for Review on *Certiorari*, raising the following issues for our consideration:

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[35] *Rollo*, p. 65.

[36] *Id.* at 67.

[37] CA *rollo*, pp. 593-606.

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE OFFICE OF THE OMBUDSMAN BY SUSTAINING THE UNSUBSTANTIATED ALLEGATIONS OF THE PRIVATE COMPLAINANT, CONTRARY TO LAW AND EXISTING JURISPRUDENCE.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DISMISSED THE PETITION FOR REVIEW DATED 04 JANUARY 2006 ON THE GROUND OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

Petitioners Bascos and Pagalilauan contend that it was error for the Court of Appeals to affirm the decision of the Office of the Ombudsman, which sustained the unsubstantiated allegations of Taganahan. They believe that the findings of fact of the Office of the Ombudsman, regarding the falsity of the Certificate of Conformity to Specifications dated 14 June 2001 and the Certificate of Inspection dated 11 June 2001, do not conform to the evidence on record. Both Taganahan and the Office of the Ombudsman should not have relied heavily on the IAS reports, inasmuch as the same had already been sufficiently answered and the IAS did not have technical knowledge of the specifications of a rice milling system to begin with, they being mere accountants, not engineers like petitioners. Petitioners Bascos and Pagalilauan even lament the fact that the IAS allegedly did not give them a chance to explain their side despite their desire to do so. Petitioners Bascos and Pagalilauan maintain that the certifications they signed were based on authentic documents, and that they were not aware of the total lack of actual inspection conducted on the equipment and its non-conformity with the Contract specifications, since the Certificate of Inspection was issued by petitioner Pagalilauan on 11 June 2001, while the reports on the alleged non-conformity with the plans were submitted only on 15 June 2001.

As regards the ruling of the Court of Appeals that they failed to exhaust administrative remedies before seeking judicial intervention, petitioners Bascos and Pagalilauan argue that they

seasonably filed an Omnibus Motion for Reconsideration and/or Reinvestigation before the Office of the Ombudsman and it was only upon the denial thereof that they filed their Petition for Review under Rule 43 with the Court of Appeals. Also, Republic Act No. 6770 and its implementing rules do not provide that the decision of the Overall Deputy Ombudsman is appealable to the Ombudsman.

Prefatorily, we agree with petitioners Bascos and Pagalilauan that, contrary to the pronouncement of the Court of Appeals, they have indeed exhausted their administrative remedies before they elevated their case to the appellate court, in accordance with the relevant rules of procedure[38] of the Office of the Ombudsman. Verily, the records indicate that when petitioners received the decision of the Office of the Ombudsman which

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[38] Sections 7 and 8, Rule III of the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 07, as amended by Administrative Order No. 17, dated 7 September 2003) clearly provides:

Section 7. Finality and execution of decision.— Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable.

In all other cases, the decision may be **appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court**, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

x x x x x x x x x

Section 8. Motion for reconsideration or reinvestigation: Grounds — Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within **ten (10)** days from receipt of the decision or order by the party on the basis of any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision;

b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

was unfavorable to them, they correctly filed their Omnibus Motion for Reconsideration and/or Reinvestigation. Upon the denial of the said motion, petitioners instituted a petition under Rule 43 before the Court of Appeals.

We now proceed to the substantive merits of the case. After carefully evaluating the instant Petition, we find that the vital issue which we must resolve is whether the administrative liability of the petitioners for dishonesty was adequately established by substantial evidence.

We rule in the affirmative.

In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion,[39] even if other minds, equally reasonable, might conceivably opine otherwise.[40]

Elementary is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made.[41] In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence.[42] It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe

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[39] RULES OF COURT, Rule 133, Section 5.

[40] *In the Matter of the Petition for Habeas Corpus of Lansang v. Garcia*, 149 Phil. 547, 593 (1971).

[41] *Bedruz v. Office of the Ombudsman*, G.R. No. 161077, 10 March 2006, 484 SCRA 452, 456, cited in *Dadulo v. Court of Appeals*, G.R. No. 175451, 13 April 2007, 521 SCRA 357, 363.

[42] *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003), cited in *Dadulo v. Court of Appeals, id.*

that a possible miscarriage of justice would thereby result.[43] Although there are exceptions[44] to this rule, we find the same to be inapplicable to the instant case.

In the case at bar, the Office of the Ombudsman pronounced that the liability of petitioners Bascos and Pagalilauan for the administrative offense of dishonesty was proven by substantial evidence.

The Office of the Ombudsman adjudged that petitioners Bascos and Pagalilauan committed misrepresentation when they imprudently signed the Certificate of Conformity to Specifications dated 14 June 2001 and the Certificate of Inspection dated 11 June 2001, respectively, only for the matters they attested to therein to be later disproved and controverted by documents and circumstances that tell an entirely different story.

The Certificate of Conformity to Specifications[45] dated 14 June 2001 executed by petitioner Bascos is as follows:

CERTIFICATE OF CONFORMITY
TO SPECIFICATIONS

This is to certify that the Alheed International Trading Corporation have **delivered and installed 100% accomplishment** of the 2.5 TPH

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[43] *Sesbreño v. Court of Appeals*, G.R. No. 101487, 22 April 2005, 456 SCRA 522, 532, cited in *Dadulo v. Court of Appeals*, *supra* note 41.

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

[45] Records, p. 34.

Rice Mill for NAWACO I, San Jose, Occidental Mindoro on June 5, 2001 per attached accomplishment report no. 2, which was certified and inspected by the TSD inspector at the site.

This certification is issued for billing purposes by the Alheed International Trading Corporation.

Certified Correct:
(signed)
LEODEGARIO R. BASCOS, JR.
Director, TSD (Emphasis ours.)

On the other hand, the Certificate of Inspection[46] dated 11 June 2001 of petitioner Pagalilauan reads:

CERTIFICATE OF INSPECTION

This is to certify that one (1) unit 2.5 TPH Buivanggo [Rice mill] **supplied, delivered, installed and commissioned** by Alheed International Trading Corporation at San Jose, Occidental Mindoro has been inspected on June 9, 2001 and found to be **in accordance with the NFA specifications**.

This certification is issued in accordance with the contract provisions, only for billing purposes.

Issued on June 11, 2001.

(signed)
ELEAZAR B. PAGALILAUAN
TSD Engineer (Emphasis ours.)

As pointed out by the Office of the Ombudsman, as early as 15 June 2001, the Travel/Project Accomplishment Report[47] of TSD Engineers Castro and Asprec informed petitioner Bascos of some of the irregularities regarding the installation of the rice mill in San Jose, Occidental Mindoro. Itemized in the report were the goods or materials that were undelivered or were, otherwise, delivered in excess, the costs of which were then

[46] *Id.* at 31.

[47] CA *rollo*, pp. 399-401.

to be shouldered by the NFA. Also included in said report was a list of some equipment the actual specifications of which were different from those indicated in the Bid Proposal of Alheed Corp.

After being subsequently apprised of the possible violations of the Contract and the deviations from the NFA specifications for the rice mills, petitioners still failed to cause the deferment of the payment of the remaining 30% of the contract price to Alheed Corp. Instead, petitioners allowed the final payment to proceed on 17 August 2001 on the basis of their apparently erroneous (if not false) certificates, thus, causing damage to the government.

Similarly, the Office of the Ombudsman noted that in the audit report **IAS No. H-006**[48] dated 06 September 2001, certain procedural oversights appeared to have been committed in the implementation of the Contract, contrary to its specific terms. Particularly, in the conduct of its audit, the IAS observed that the payment of the contract price was consummated without first coursing the documents to IAS, which was in violation of the provision subjecting all payments made under the Contract to NFA accounting and auditing procedures.

On 22 November 2001, petitioner Bascos sent a Memorandum[49] to the NFA Administrator, seeking to clarify and refute the contents of the audit report IAS No. H-006. The Office of the Ombudsman ruled, however, that the justifications put forward by petitioner Bascos proved to be unsatisfactory, given that the IAS submitted another audit report, **IAS No. A-002**[50] dated 7 January 2002, to the NFA Administrator, which incorporated the same findings contained in the previous audit report. The second audit report also included additional observations and findings of violations of the Contract.

Moreover, petitioner Bascos, in his Counter-Affidavit[51] before the Office of the Ombudsman, neither confirmed nor denied that the required testing of the rice mill for a period of at least eight

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[48] *Id.* at 111-112.

[49] Records, pp. 50-53.

[50] *Id.* at 57-63.

[51] *Id.* at 96-110.

hours of continuous operation for three times was not complied with. Petitioner Pagalilauan, on the other hand, admitted in his Counter-Affidavit[52] that the testing requirement as provided in the Contract with Alheed Corp. was not observed, but, in place thereof, the evaluation team that conducted the testing allegedly followed the NFA standard test milling of two hours per batch. Clearly, the actions of the evaluation team were in clear contravention of the explicit terms of the Contract.

On the basis of the aforementioned evidence and circumstances, the Office of the Ombudsman ruled, and the Court of Appeals affirmed, that petitioners Bascos and Pagalilauan indeed committed acts of dishonesty.

As an administrative offense, dishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[53] It is the **concealment or distortion of truth in a matter of fact** relevant to one's office or connected with the performance of his duties.[54] Dishonesty is considered as a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292[55] and Section 52(A)(1), Rule IV of Resolution No. 99-1936.[56]

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[52] *Id.* at 147-160.

[53] *Philippine Amusement and Gaming Corp. v. Rilloraza*, 412 Phil. 114, 133 (2001).

[54] *Alfonso v. Office of the President*, G.R. No. 150091, 2 April 2007, 520 SCRA 64, 87.

[55] The Administrative Code of 1987.

[56] REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE. The relevant provision reads:

Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty
   1st offense – Dismissal

It is apparent to us that petitioners Bascos and Pagalilauan signed the Certificate of Conformity to Specifications dated 14 June 2001 and the Certificate of Inspection dated 11 June 2001, respectively, in a hasty and irregular fashion. Their misrepresentations in said certificates that Alheed Corp. had effected 100% delivery and installation of the rice mill in San Jose, Occidental Mindoro, and that the same was duly inspected and found to be in accordance with the NFA specifications, were satisfactorily exposed by evidence to the contrary. Petitioner Pagalilauan himself admits before this Court that he was not aware of the total lack of actual inspection conducted on the equipment and its non-conformity with the Contract specifications, since he executed the Certificate of Inspection on 11 June 2001, ahead of the submission of the report on the alleged non-conformity of the rice mill with the plans on 15 June 2001.[57] Such an admission, instead of benefiting petitioner Pagalilauan, actually works against him because it shows that he signed the said Certificate without the complete and necessary information. To certify would be to attest to certain matters or to confirm them as true. Before issuing such certificates, it behooves the public officer to verify the contents thereof, for, undoubtedly, other people would be relying on said certificates for some legal or other purpose.

To make matters worse, petitioners Bascos and Pagalilauan failed to prove that they had exercised due diligence by investigating the alleged inconsistencies with and ostensible violations of the provisions of the Contract before facilitating the payment to Alheed Corp. of the balance of the purchase price for the rice mill. What they could only proffer were belated justifications for what they try to downplay as trivial deviations from the Contract. Considering the substantial amount of public funds involved in this Contract, as well as the vital public interest at stake, petitioners as public officials should have exercised more good sense in the performance of their functions in this case.

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[57] Petitioner's Memorandum, *rollo*, pp. 354-370.

Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that a public office is a public trust; and all public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.[58]

In fine, the confluence of the foregoing circumstances leads to the inevitable conclusion that petitioners Bascos and Pagalilauan, in signing certifications that contained untruthful statements, were indeed guilty of acts of dishonesty in the exercise of their public functions, thus, warranting their dismissal from the service in accordance with Section 52(A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

WHEREFORE, premises considered, the Petition for Review is hereby *DENIED*. The Decision dated 28 May 2007 and the Resolution dated 20 November 2007 of the Court of Appeals in CA-G.R. SP No. 92533 are hereby *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

Puno, C.J., Quisumbing,** Austria-Martinez (Acting Chairperson),* and *Peralta, JJ.,* concur.

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[58] Section 1, Article XI, 1987 Constitution.

* Chief Justice Reynato S. Puno was designated to sit as additional member replacing Associate Justice Eduardo B. Nachura per Raffle dated 11 February 2009.

** Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

THIRD DIVISION

[G.R. No. 185202. February 18, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO TARUC @ TARUC,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AUTOMATIC REVIEW OF CAPITAL PUNISHMENT CASE BY THE COURT OF APPEALS IS MANDATORY DESPITE THE ESCAPE OF THE ACCUSED-APPELLANT. — [T]he escape of the accused-appellant did not preclude the Court of Appeals from exercising its review jurisdiction, considering that what was involved was capital punishment. Automatic review being mandatory, it is not only a power of the court but a duty to review all death penalty cases.

2. ID.; ID.; RIGHTS OF ACCUSED; RIGHT TO APPEAL; DEEMED WAIVED WHEN THE ACCUSED ESCAPED PRISON. — By escaping prison, accused-appellant impliedly waived his right to appeal. In *People v. Ang Gioc*, the Court enunciated that: There are certain fundamental rights which cannot be waived even by the accused himself, but the right of appeal is not one of them. This right is granted solely for the benefit of the accused. He may avail of it or not, as he pleases. He may waive it either expressly or by implication. When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him x x x. The accused cannot be accorded the right to appeal unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested within 15 days from notice of the judgment against him. While at large, he cannot seek relief from the court, as he is deemed to have waived the appeal. Thus, having escaped from prison or confinement, he loses his standing in court; and unless he surrenders or submits to its jurisdiction, he is deemed to have waived any right to seek relief from the court.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, assailing the Decision[1] of the Court of Appeals dated 27 February 2008 in CA-G.R. CR H.C. No. 01638 entitled, *People of the Philippines v. Francisco Taruc @ Taruc*, which affirmed with modification the Decision dated 29 June 2005 of the Regional Trial Court (RTC) of Bataan, Branch 3, in Criminal Case No. 8010 for murder.

Accused-appellant Francisco Taruc was charged in Criminal Case No. 8010 before the RTC of Bataan, Branch 3, with the crime of murder in connection with the death of Emelito Sualog.

The Information reads:

> That on or about November 8, 1998 at Brgy. Puting Buhangin, Orion, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack , assault and use personal violence upon Emelito Sualog @ Elmer, by then and there shooting him with a Celiber (sic) 45 on the different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death, thereafter, to the damage and prejudice of the heirs of the said victim.[2]

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[1] Penned by Associate Justice Regalado E. Maambong with Associate Justices Celia C. Librea-Leagogo and Ramon R. Garcia, concurring; *rollo*, pp. 2-20.

[2] Records, p. 1.

Upon arraignment on 25 April 2005, accused, duly assisted by a lawyer from the Public Attorney's Office (PAO),[3] pleaded not guilty to the crime charged.

After trial on the merits, the RTC on 29 June 2005 rendered a Decision[4] convicting the accused, the decretal portion of which reads:

> WHEREFORE, accused FRANCISCO TARUC is found GUILTY beyond reasonable doubt as principal by direct participation pf the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, and with the attending aggravating circumstance of treachery, is hereby sentenced to suffer the penalty of DEATH.
>
> Accused Francisco Taruc is likewise ordered to pay the heirs of the victim Emelito Saulog the amounts of ₱49,225.00 in actual damages, ₱50,000.00 in civil indemnity and ₱30,000.00 in moral damages.
>
> Issue warrant of arrest against accused Francisco Taruc that he may serve the sentence imposed against him.[5]

The case was brought to the Court of Appeals for automatic review pursuant to A.M. No. 00-5-03-SC[6] where it was docketed as CA-G.R. CR No. 01638.

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[3] *Id.* at 16.

[4] CA *rollo*, pp. 11-14.

[5] *Id.* at 14.

[6] Sec. 3. *How appeal taken.* x x x

> (d) No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.
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> x x x x x x x x x
>
> Sec. 10. *Transmission of records in case of death penalty*. — In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for **automatic review** and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter.

On 13 January 2006, accused-appellant, through the PAO, filed a Motion for Extension of Time to File Appellant's Brief.[7]

Considering that the Notice to File Brief addressed to accused-appellant was returned to the appellate court with postal notation "moved out," the Court of Appeals directed accused-appellant's counsel to furnish it with the present and complete address of his client within five days from notice.

In compliance, the PAO lawyer concerned informed[8] the Court of Appeals that accused-appellant escaped from prison on 23 August 2002. Said PAO lawyer claimed that he had no means of knowing the current whereabouts of the accused-appellant. Thereupon, the PAO lawyer asked the Court of Appeals to direct the Warden of the Provincial Jail in Balanga, Bataan, to file a certification as to the accused-appellant's escape.

On 20 February 2006, the Court of Appeals required[9] the Warden of the Bataan Provincial Jail to comment on the aforestated information relayed by the PAO lawyer.

On 6 March 2006, Ropadolfo Fabros Torcuato, Sr., Officer-in-Charge (OIC), Warden of the Bataan Provincial Jail, conveyed[10] to the appellate court that accused-appellant was indeed committed to said jail on 10 November 2000 but escaped at about 11:00 p.m. on 23 August 2002.

On 23 March 2006, notwithstanding the escape of accused-appellant from prison, the Court of Appeals granted PAO's Motion for Extension of Time to File Appellant's Brief, in view of the ruling of the Supreme Court in *People v. Flores*,[11] making the review of death penalty cases mandatory. The period of extension granted had lapsed without the accused-appellant filing his brief; thus, the Court of Appeals required the PAO

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

[8] *Id.* at 21.

[9] *Id.* at 26.

[10] *Id.* at 27.

[11] G.R. No. 170565, 31 January 2006, 481 SCRA 451, 454.

to show cause why the latter should not be held in contempt for failing to file the same.[12]

The Court of Appeals found the explanation valid, and accepted the briefs of both the appellant and the appellee, and considered the case submitted for decision.

On 27 February 2008, the Court of Appeals rendered a Decision affirming with modification the Decision of the RTC, the dispositive portion of which reads:

> WHEREFORE, the Decision of the Regional Trial Court, Branch 3, City of Balanga, Bataan in Criminal Case No. 8010 is AFIRMED (sic) WITH MODIFICATIONS. The accused-appellant Francisco Taruc, is found guilty beyond reasonable doubt of murder qualified by treachery, defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. In view of R.A. No. 9346, the modification of the penalty imposed by the trial court from death to *reclusion perpetua* is ordered.
>
> The accused-appellant Francisco Taruc is likewise ordered to pay the heirs of the victim, Emelito Sualog, Fifty Thousand Pesos (₱50,000.00) as civil indemnity *ex delicto;* Forty-Nine Thousand Two Hundred Fifty Five (₱49,255.00) as actual damages; Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages. Costs against the accused-appellant.

On 13 March 2008, accused-appellant, still represented by the PAO, filed a Notice of Appeal[13] stating that he was appealing the Decision of the Court of Appeals to the Supreme Court on questions of law and fact. And on 29 April 2008, the Court of Appeals gave due course to accused-appellant's appeal and directed its Records Division to forward the *rollo* and records of the case to the Supreme Court.[14]

Hence, this Petition.

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[12] CA *rollo,* pp. 41-42.

[13] *Rollo,* p. 107.

[14] *Id.* at 110.

As may be gleaned from the records, before the prosecution witness Randy Espina could be cross-examined,[15] accused-appellant escaped from the Bataan Provincial Jail on 23 August 2002. Thus, the RTC considered the act of the accused as a waiver to cross-examine said witness. Thereafter, the trial court promulgated a judgment of conviction while accused-appellant was at large. He remains at large even while his counsel continues to file various pleadings on his behalf before the RTC, the Court of Appeals, and this Court.

Given that the accused-appellant escaped from jail and eluded arrest until the present, the issue of whether he has lost his right to appeal his conviction inexorably ensues.

An accused is required to be present before the trial court at the promulgation of the judgment in a criminal case. If the accused fails to appear before the trial court, promulgation of judgment shall be made in accordance with Rule 120, Section 6, paragraphs 4 and 5 of the Revised Rules of Criminal Procedure, to wit:

> In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.
>
> If the judgment is for conviction and the failure of the accused to appear was **without justifiable cause**, **he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest.** Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Emphasis supplied.)

Consistently, Rule 124, Section 8, paragraph 2 of the same Rules allows the Court of Appeals, upon motion of the appellee

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[15] CA Decision, p. 6; *rollo*, p. 7.

or *motu proprio*, to dismiss the appeal of the accused-appellant who eludes the jurisdiction of the courts over his person, *viz*:

> SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute*. – The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio*.
>
> The Court of Appeals may also, upon motion of the appellee or *motu proprio*, **dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.** (Emphasis supplied.)

In allowing the dismissal of the appeal of the accused-appellant under the circumstances identified by the foregoing rule, the Court, in *People v. Mapalao*,[16] explained that:

> [O]nce an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court.

Although Rule 124, Section 8 particularly applies to the Court of Appeals, it has been extended to the Supreme Court by Rule 125, Section 1 of the Revised Rules of Criminal Procedure, which reads:

> SECTION 1. *Uniform procedure. — Unless* otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original and in appealed cases shall be the same as in the Court of Appeals.

It is indisputable that accused-appellant herein, by escaping from jail, was not present at the promulgation by the RTC of its Decision dated 29 June 2005 in Criminal Case No. 8010, finding him guilty of the crime of murder. Accused-appellant failed to surrender and file the required motion within 15 days from the promulgation of the RTC Decision. This alone already

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[16] 274 Phil. 354, 363 (1991).

deprived him of any remedy against said judgment of conviction available under the Revised Rules of Criminal Procedure, including the right to appeal the same.

The foregoing notwithstanding, the escape of the accused-appellant did not preclude the Court of Appeals from exercising its review jurisdiction, considering that what was involved was capital punishment. Automatic review being mandatory, it is not only a power of the court but a duty to review all death penalty cases.[17]

In this case, considering that the penalty imposed by the trial court was death, the Court of Appeals rightly took cognizance of the case. Upon review by the appellate court, however, it modified the penalty from death to *reclusion perpetua*.

We now come to the resolution of the case.

By escaping prison, accused-appellant impliedly waived his right to appeal. In *People v. Ang Gioc*,[18] the Court enunciated that:

> There are certain fundamental rights which cannot be waived even by the accused himself, but the right of appeal is not one of them. This right is granted solely for the benefit of the accused. He may avail of it or not, as he pleases. He may waive it either expressly or by implication. When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him x x x.

The accused cannot be accorded the right to appeal unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested within 15 days from notice of the judgment against him.[19] While at large, he cannot seek relief from the court, as he is deemed to have waived the appeal.[20] Thus, having escaped from prison or confinement, he loses his standing in court; and

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[17] *People v. Esparas*, 329 Phil. 339, 345-346 (1996).

[18] 73 Phil. 366, 369.

[19] *Id*.

[20] *Id.*, citing *People v. Mapalao, supra* note 16.

unless he surrenders or submits to its jurisdiction, he is deemed to have waived any right to seek relief from the court.

By putting himself beyond the reach and application of the legal processes of the land, accused-appellant revealed his contempt of the law and placed himself in a position to speculate, at his pleasure on his chances for a reversal. In the process, he kept himself out of the reach of justice, but hoped to render the judgment nugatory at his option.[21] Such conduct is intolerable and does not invite leniency on the part of the appellate court.[22]

Accused-appellant, in the case at bar, has remained at large for most of the proceedings before the RTC, as well as for the entirety of the pendency of his appeal before the Court of Appeals, and even until now when his appeal is pending before this Court. He cannot so audaciously hope that his appeal before this Court would succeed. He only hopes in vain.

WHEREFORE, the appeal is *DISMISSED*. Let the records of this case be remanded to the trial court for the issuance of the *mittimus*.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Austria-Martinez (Acting Chairperson),* and *Peralta, JJ.,* concur.

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[21] Francisco, *CRIMINAL PROCEDURE* (1996, 3rd ed.), p. 520.

[22] *Id.*

[*] Associate Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 11 February 2009.

[**] Per Special Order No. 575, Associate Justice Antonio T. Carpio was designated as as additional member in place of Associate Justice Consuelo Ynares-Santiago who is on offical leave under the Court's Wellness Program.

SECOND DIVISION

[G.R. No. 167938. February 19, 2009]

HANJIN HEAVY INDUSTRIES AND CONSTRUCTION COMPANY, LTD. (FORMERLY HANJIN ENGINEERING AND CONSTRUCTION CO., LTD.), *petitioner, vs.* **HONORABLE COURT OF APPEALS, Hon. RAUL T. AQUINO in his capacity as Pres. Commissioner, Commissioners VICTORIANO R. CALAYCAY and ANGELITA A. GACUTAN of the 2nd Division of the NATIONAL LABOR RELATIONS COMMISSION-Quezon City, MULTILINE RESOURCES CORPORATION Represented by its owner JOSE DELA PEÑA and LAURO B. RAMOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A SUBSTITUTE FOR THE LOST REMEDY OF AN APPEAL UNDER RULE 45 OF THE RULES OF COURT. — Time and again, we said that the special civil action for *certiorari* is not and cannot be made a substitute for the lost remedy of an appeal under Rule 45. Here, as correctly pointed out by the Solicitor General, Hanjin failed to prove that it had no appeal or any other efficacious remedy against the decision of the Court of Appeals and the proper remedy of a party aggrieved is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure. As provided in Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent civil action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of appeal.

2. ID.; APPEALS; PERFECTION OF AN APPEAL WITHIN THE STATUTORY OR REGLEMENTARY PERIOD IS NOT ONLY

MANDATORY BUT ALSO JURISDICTIONAL AND FAILURE TO DO SO RENDERS THE QUESTIONED DECISION FINAL AND EXECUTORY. — [P]etitioner should have appealed the NLRC's adverse ruling of illegal dismissal to the Court of Appeals. This, petitioner failed to do. The records reveal that only private respondent Ramos appealed the NLRC's decision to the Court of Appeals praying for the award of the full monetary value of the unexpired portion of his employment contract, and not merely his three months salary as provided under Republic Act No. 8042. Thus, with regard to petitioner, the factual findings of illegal dismissal by the NLRC had already become final. In *Asuncion v. National Labor Relations Commission*, we ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, thus depriving the appellate court jurisdiction to alter the final judgment, much less to entertain the appeal. As we said, although Hanjin had the opportunity to appeal its case, it did not.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GROUNDS; WHERE THE ISSUE OR QUESTION INVOLVED AFFECTS THE WISDOM OF THE DECISION, NOT THE JURISDICTION OF THE COURT TO RENDER THE DECISION, THE SAME IS BEYOND THE PROVINCE OF A SPECIAL CIVIL ACTION FOR *CERTIORARI*. — [A] perusal of the issues raised by petitioners, although alleging grave abuse of discretion, are clearly for the correction of errors of judgment, not errors of jurisdiction. If indeed errors of facts and erroneous appreciation of facts had been committed by the appellate court, still these would not amount to grave abuse of discretion. Where the issue or question involved affects the wisdom of the decision – not the jurisdiction of the court to render the decision – the same is beyond the province of a special civil action for *certiorari*.

4. ID.; APPEALS; CIRCUMSTANCES UNDER WHICH A PETITION WRONGLY FILED UNDER RULE 65 OF THE RULES OF COURT CAN BE TREATED AS ONE HAVING BEEN FILED UNDER RULE 45; NOT PRESENT IN CASE AT BAR. — Neither can we treat the instant petition as one having been filed under Rule 45. We can only treat a petition wrongly filed under Rule 65 as one filed under Rule 45 if petitioner had alleged grave abuse of discretion in its petition under the following circumstances: (1) If the petition is filed within 15 days from

notice of the judgment or final order or resolution appealed from; or (2) If the petition is meritorious. The instant case, however, does not fall under either of the two exceptions because Hanjin's petition was filed 60 days after notice of the assailed judgment and in our considered view, the issues presented by the petition lacks merit.

APPEARANCES OF COUNSEL

M.A. Aguinaldo & Associates for petitioner.
Potenciano A. Flores, Jr. for L.A. Ramos.

D E C I S I O N

QUISUMBING, *J.*:

This is a special civil action for *certiorari* seeking to set aside and nullify the Decision[1] dated August 27, 2004 and Resolution[2] dated March 9, 2005 of the Court of Appeals in CA-G.R. SP No. 74536. The appellate court modified the Resolution[3] dated July 30, 2002 of the National Labor Relations Commission (NLRC) finding petitioner Hanjin Heavy Industries and Construction Company, Ltd. (Hanjin) guilty of illegal dismissal and awarding private respondent Lauro B. Ramos a full year of salaries.

The facts are as follows:

Private respondent Multiline Resources Corporation (Multiline) is a recruitment agency engaged in the deployment of workers to Saudi Arabia. Hanjin is the Saudi-based principal of Multiline which also holds office in the Philippines.

On October 29, 1992, Ramos applied with Multiline for overseas employment as a barber. After passing the examination and

[1] *Rollo*, pp. 40-50. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring.

[2] *Id.* at 52-54.

[3] *Id.* at 132-147.

interview conducted by Multiline and submitting the necessary travel documents, he signed his contract and job order. The contract specified that Ramos was to work as a barber for twelve months for a monthly salary of US$ 265.

Upon arrival in Saudi Arabia, Ramos proceeded to the office of Hanjin. However, he was informed that the position he applied for had already been filled up and there was no more vacancy. Ramos was thus forced to beg for food and to share sleeping quarters with other Filipinos in Saudi Arabia. After five days, he returned to the Philippines.

Ramos then filed a Complaint[4] with the Philippine Overseas Employment Administration (POEA) against Hanjin and Multiline for illegal dismissal/illegal termination of contract.

In a Decision[5] dated September 26, 1995, the POEA Administrator ruled:

> WHEREFORE, premises considered, respondents Multiline Resources Corporation, Hanil Development Corporation and Country Bankers Insurance Corporation are hereby ordered, jointly and severally, to pay complainant Lauro Ramos, the amount of USDollars: THREE THOUSAND ONE HUNDRED EIGHTY (US$3,180.00) or its equivalent in Philippine currency at the prevailing rate of exchange at the time of payment, representing his salaries for the period of one (1) year, plus ten percent (10%) thereof, as and by way of attorney's fees.
>
> SO ORDERED.[6]

Subsequently, Multiline appealed to the NLRC. Finding no merit in Multiline's petition, the same was denied in an Order dated March 28, 1996.

However, in an Order[7] dated August 28, 1996, the NLRC set aside the Order of March 28, 1996, as follows:

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[4] CA *rollo*, p. 66.

[5] *Id.* at 69-72.

[6] *Id.* at 72.

[7] *Rollo*, pp. 96-98.

On second look, however, we note that the POEA Administrator rendered his decision on the above-entitled case on September 26, 1995. Considering that at said time, the said Administrator already lost jurisdiction over this case (pursuant to Republic Act No. 8042) it therefore becomes imperative that the said decision, which was brought to us on appeal by respondent Multiline Resources Corporation, be set aside and forwarded to Labor Arbiter Teresita C. Lora….

xxx xxx xxx

The case was re-assigned to another Labor Arbiter who issued an Order[8] on February 18, 1997 dismissing the case for failure of both parties to appear on several scheduled meetings despite due notice.

Ramos filed a motion to re-open the case. Subsequently, on August 14, 1997, the Labor Arbiter issued an Order[9] dismissing the case without prejudice. Ramos re-filed the case on August 18, 1997 and the same was given due course.

On February 9, 1999,[10] the Labor Arbiter dismissed the complaint of Ramos after finding that his dismissal was legal.

On appeal, the NLRC reversed the decision of the Labor Arbiter in a Resolution dated July 30, 2002. The NLRC ruled:

WHEREFORE, premises considered, Complainant's appeal is **GRANTED**. The Labor Arbiter's decision in the above-entitled case is hereby **ANNULLED** and **SET ASIDE**. A new one is entered declaring that Complainant was illegally dismissed from his employment. Respondent Hanjin Engineering & Construction Corp., formerly Hanil Development Corp., Ltd., is hereby ordered to pay Complainant the following: US$795.00 at its peso equivalent at the time of payment, representing his salaries for three (3) months; ₱25,000.00 as moral damages; and attorney's fees equivalent to ten percent (10%) of his total monetary award.

SO ORDERED.[11]

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[8] *Id.* at 94.

[9] *Id.* at 95.

[10] *Id.* at 100-104.

[11] *Id.* at 146-147.

Ramos appealed the case to the Court of Appeals on the ground that he is entitled to a salary equivalent to the full unexpired portion of his employment contract, which is one year. Hanjin and Multiline for their part, did not appeal.

In a Decision dated August 27, 2004, the Court of Appeals granted Ramos' petition and modified the assailed NLRC resolution by awarding Ramos his salaries for the entire unexpired portion of his contract. The dispositive portion reads:

> WHEREFORE, the petition is **GRANTED**. The assailed NLRC Resolutions are **MODIFIED** in that petitioner is hereby awarded his full salaries for one year, instead of three months only.
>
> SO ORDERED.[12]

Hence, this petition by Hanjin, on the following grounds:

I.

THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION BY ENTERTAINING THE PETITION FILED BEFORE IT BY PRIVATE RESPONDENT DESPITE FAILURE OF THE LATTER TO FURNISH THE UNDERSIGNED COUNSEL A COPY OF THE PETITION.

II.

PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN HOLDING PETITIONER LIABLE FOR ILLEGAL DISMISSAL DESPITE ABSENCE OF EMPLOYEE-EMPLOYER RELATIONSHIP BETWEEN PRIVATE RESPONDENT AND PETITIONER.

III.

ASSUMING WITHOUT ADMITTING THAT EMPLOYEE-EMPLOYER RELATIONSHIP EXISTS BETWEEN PRIVATE RESPONDENT AND PETITIONER, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO

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[12] *Id.* at 50.

LACK OF JURISDICTION OR AN EXCESS IN THE EXERCISE THEREOF IN NOT FINDING THE DISMISSAL OF PRIVATE RESPONDENT VALID.

IV.

ASSUMING *EX GRATIA ARGUMENTI* THAT THERE WAS ILLEGAL DISMISSAL, THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN MODIFYING THE NLRC RESOLUTION PROMULGATED ON JULY 30, 2002 BY AWARDING IN FAVOR OF PRIVATE RESPONDENT FULL SALARIES FOR ONE YEAR, INSTEAD OF THREE MONTHS ONLY.

V.

THE HONORABLE PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT REVERSING THE RESOLUTION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION PROMULGATED ON JULY 30, 2002 AWARDING MORAL DAMAGES IN FAVOR OF PRIVATE RESPONDENT SINCE THE DISMISSAL IF THERE WAS ANY, WAS NOT ATTENDED BY BAD FAITH, FRAUD OR EFFECTED IN A WANTON, OPPRESSIVE, OR MALEVOLENT MANNER.[13]

In essence, the issues presented by the petition are: (1) Did the Court of Appeals err in giving due course to the case despite failure of Ramos to furnish the counsel of Hanjin a copy of the petition? (2) Was Ramos illegally dismissed? (3) Is Ramos entitled to a one-year salary? (4) Is Ramos entitled to moral damages?

Before delving into the merits of the petition, we shall first deal with the threshold procedural questions raised herein. Respondents aver that the petition must be dismissed since Hanjin elevated the case *via* a petition for *certiorari* under

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

Rule 65[14] of the 1997 Rules of Civil Procedure, instead of under Rule 45.[15]

Time and again, we said that the special civil action for *certiorari* is not and cannot be made a substitute for the lost remedy of an appeal under Rule 45.[16] Here, as correctly pointed out by the Solicitor General, Hanjin failed to prove that it had no appeal or any other efficacious remedy against the decision of the Court of Appeals and the proper remedy of a party aggrieved is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure. As provided in Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent civil action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of appeal.[17]

[14] **SECTION 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.

[15] **SECTION 1**. *Filing of petition with Supreme Court*. —A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[16] *Davao Merchant Marine Academy v. Court of Appeals*, G.R. No. 144075, April 19, 2006, 487 SCRA 396, 404.

[17] *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, G.R. No. 110701, March 12, 2002, 379 SCRA 7, 14.

Moreover, petitioner should have appealed the NLRC's adverse ruling of illegal dismissal to the Court of Appeals. This, petitioner failed to do. The records reveal that only private respondent Ramos appealed the NLRC's decision to the Court of Appeals praying for the award of the full monetary value of the unexpired portion of his employment contract, and not merely his three months salary as provided under Republic Act No. 8042.[18] Thus, with regard to petitioner, the factual findings of illegal dismissal by the NLRC had already become final.

In *Asuncion v. National Labor Relations Commission*,[19] we ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, thus depriving the appellate court jurisdiction to alter the final judgment, much less to entertain the appeal.[20] As we said, although Hanjin had the opportunity to appeal its case, it did not.

Likewise, by availing of a wrong or inappropriate mode of appeal, the petition merits an outright dismissal pursuant to Circular No. 2-90[21] which provides that, "an appeal taken to either Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed."[22]

Moreover, a perusal of the issues raised by petitioners, although alleging grave abuse of discretion, are clearly for the correction of errors of judgment, not errors of jurisdiction.[23] If indeed errors

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[18] 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, approved on June 7, 1995.

[19] G.R. No. 109311, June 17, 1997, 273 SCRA 498.

[20] *Rollo*, pp. 315-316.

[21] GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT (March 9, 1990).

[22] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, G.R. No. 138270, June 28, 2001, 360 SCRA 173, 180.

[23] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, October 16, 2006, 504 SCRA 336, 351.

of facts and erroneous appreciation of facts had been committed by the appellate court, still these would not amount to grave abuse of discretion. Where the issue or question involved affects the wisdom of the decision – not the jurisdiction of the court to render the decision – the same is beyond the province of a special civil action for *certiorari.*[24]

Neither can we treat the instant petition as one having been filed under Rule 45. We can only treat a petition wrongly filed under Rule 65 as one filed under Rule 45 if petitioner had alleged grave abuse of discretion in its petition under the following circumstances: (1) If the petition is filed within 15 days from notice of the judgment or final order or resolution appealed from; or (2) If the petition is meritorious.[25] The instant case, however, does not fall under either of the two exceptions because Hanjin's petition was filed 60 days after notice of the assailed judgment and in our considered view, the issues presented by the petition lacks merit.

Conformably then, we are constrained to dismiss the instant petition for utter lack of merit.

WHEREFORE, the petition is hereby *DISMISSED*. The Decision dated August 27, 2004 and the Resolution dated March 9, 2005 of the Court of Appeals in CA-G.R. SP No. 74536 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura,[*] and *Brion, JJ.,* concur.

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[24] *Danzas Corporation v. Abrogar,* G.R. No. 141462, December 15, 2005, 478 SCRA 80, 87, citing *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 482.

[25] *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 97.

[*] Additional member in lieu of Associate Justice Dante O. Tinga who is on sabbatical leave.

EN BANC

[G.R. No. 176947. February 19, 2009]

GAUDENCIO M. CORDORA, *petitioner, vs.* **COMMISSION ON ELECTIONS and GUSTAVO S. TAMBUNTING,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROBABLE CAUSE; DEFINED. — Probable cause constitutes those facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed. Determining probable cause is an intellectual activity premised on the prior physical presentation or submission of documentary or testimonial proofs either confirming, negating or qualifying the allegations in the complaint.

2. POLITICAL LAW; CONSTITUTIONAL LAW; ELECTIONS; QUALIFICATIONS; CITIZENSHIP; DUAL CITIZENSHIP IS NOT A GROUND FOR DISQUALIFICATION FROM RUNNING FOR ANY ELECTIVE LOCAL POSITION; DUAL CITIZENSHIP AND DUAL ALLEGIANCE, DISTINGUISHED. — We deem it necessary to reiterate our previous ruling in *Mercado v. Manzano*, wherein we ruled that dual citizenship is not a ground for disqualification from running for any elective local position. To begin with, dual citizenship is different from dual allegiance. The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship: (1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*; (2) Those born in the Philippines of Filipino mothers

and alien fathers if by the laws of their fathers' country such children are citizens of that country; (3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship. There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state; but the above cases are clearly possible given the constitutional provisions on citizenship. Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition. x x x **[F]or candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.** As Joaquin G. Bernas, one of the most perceptive members of the Constitutional Commission, pointed out: "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control." By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual has not effectively renounced his foreign citizenship. That is of no moment x x x.

3. ID.; ID.; ID.; ID.; ID.; REPUBLIC ACT 9225 (CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003); TWIN REQUIREMENTS FOR NATURALIZED CITIZENS WHO REAQUIRE FILIPINO CITIZENSHIP AND DESIRE TO RUN FOR ELECTIVE PUBLIC OFFICE IN THE PHILIPPINES; NOT APPLICABLE IN CASE AT BAR. — In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications

for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC*, *Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.

4. ID.; ID.; ID.; ID.; RESIDENCY; NOT DEPENDENT UPON CITIZENSHIP. — x x x [R]esidency, for the purpose of election laws, includes the twin elements of the fact of residing in a fixed place and the intention to return there permanently, and is not dependent upon citizenship.

APPEARANCES OF COUNSEL

Sibayan and Associates Law Office for petitioner.
Chavez Miranda Aseoche Law Offices for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for *certiorari* and *mandamus*, with prayer for the issuance of a temporary restraining order under Rule 65 of the 1997 Rules of Civil Procedure.

In EO Case No. 05-17, Gaudencio M. Cordora (Cordora) accused Gustavo S. Tambunting (Tambunting) of an election offense for violating Section 74 in relation to Section 262 of the Omnibus Election Code. The Commission on Elections'

(COMELEC) *En Banc* dismissed Cordora's complaint in a Resolution[1] dated 18 August 2006. The present petition seeks to reverse the 18 August 2006 Resolution as well as the Resolution[2] dated 20 February 2007 of the COMELEC *En Banc* which denied Cordora's motion for reconsideration.

The Facts

In his complaint affidavit filed before the COMELEC Law Department, Cordora asserted that Tambunting made false assertions in the following items:

> That Annex A [Tambunting's Certificate of Candidacy for the 2001 elections] and Annex B [Tambunting's Certificate of Candidacy for the 2004 elections] state, among others, as follows, particularly Nos. 6, 9 and 12 thereof:
>
> 1. No. 6 – I am a Natural Born/Filipino Citizen
> 2. No. 9 – No. of years of Residence before May 14, 2001. **36** in the Philippines and **25** in the Constituency where I seek to be elected;
> 3. No. 12 – I am ELIGIBLE for the office I seek to be elected.[3]

(Boldface and capitalization in the original)

Cordora stated that Tambunting was not eligible to run for local public office because Tambunting lacked the required citizenship and residency requirements.

To disprove Tambunting's claim of being a natural-born Filipino citizen, Cordora presented a certification from the Bureau of Immigration which stated that, in two instances, Tambunting

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[1] *Rollo*, pp. 36-41. Penned by Commissioner Florentino A. Tuason, Jr., with Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer, concurring.

[2] *Id*. at 44-47. Penned by Commissioner Rene V. Sarmiento, with Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, and Nicodemo T. Ferrer, concurring.

[3] *Id.* at 29.

claimed that he is an American: upon arrival in the Philippines on 16 December 2000 and upon departure from the Philippines on 17 June 2001. According to Cordora, these travel dates confirmed that Tambunting acquired American citizenship through naturalization in Honolulu, Hawaii on 2 December 2000. Cordora concluded:

> That Councilor Gustavo S. Tambunting contrary to the provision of Sec 74 (OEC): [sic] Re: CONTENTS OF CERTIFICATE OF CANDIDACY: which requires the declarant/affiant to state, among others, **under oath**, that he is **a Filipino** (No. 6), No. 9- **residence** requirement **which he lost when** [he was] naturalized as an **American Citizen** on December 2, 2000 at [sic] Honolulu, Hawaii, knowingly and willfully **affirmed** and **reiterated** that he possesses the above **basic requirements** under No. 12 – **that he is indeed eligible for the office to which he seeks to be elected,** when in truth and in fact, **the contrary** is indubitably established by **his own statements** before the Philippine Bureau of Immigration x x x.[4] (Emphases in the original)

Tambunting, on the other hand, maintained that he did not make any misrepresentation in his certificates of candidacy. To refute Cordora's claim that Tambunting is not a natural-born Filipino, Tambunting presented a copy of his birth certificate which showed that he was born of a Filipino mother and an American father. Tambunting further denied that he was naturalized as an American citizen. The certificate of citizenship conferred by the US government after Tambunting's father petitioned him through INS Form I-130 (Petition for Relative) merely confirmed Tambunting's citizenship which he acquired at birth. Tambunting's possession of an American passport did not mean that Tambunting is not a Filipino citizen. Tambunting also took an oath of allegiance on 18 November 2003 pursuant to Republic Act No. 9225 (R.A. No. 9225), or the Citizenship Retention and Reacquisition Act of 2003.

Tambunting further stated that he has resided in the Philippines since birth. Tambunting has imbibed the Filipino culture, has spoken the Filipino language, and has been educated in Filipino schools. Tambunting maintained that proof of his loyalty and

[4] *Id.* at 30.

devotion to the Philippines was shown by his service as councilor of Parañaque.

To refute Cordora's claim that the number of years of residency stated in Tambunting's certificates of candidacy is false because Tambunting lost his residency because of his naturalization as an American citizen, Tambunting contended that the residency requirement is not the same as citizenship.

The Ruling of the COMELEC Law Department

The COMELEC Law Department recommended the dismissal of Cordora's complaint against Tambunting because Cordora failed to substantiate his charges against Tambunting. Cordora's reliance on the certification of the Bureau of Immigration that Tambunting traveled on an American passport is not sufficient to prove that Tambunting is an American citizen.

The Ruling of the COMELEC *En Banc*

The COMELEC *En Banc* affirmed the findings and the resolution of the COMELEC Law Department. The COMELEC *En Banc* was convinced that Cordora failed to support his accusation against Tambunting by sufficient and convincing evidence.

The dispositive portion of the COMELEC *En Banc's* Resolution reads as follows:

> WHEREFORE, premises considered, the instant complaint is hereby DISMISSED for insufficiency of evidence to establish probable cause.
>
> SO ORDERED.[5]

Commissioner Rene V. Sarmiento (Commissioner Sarmiento) wrote a separate opinion which concurred with the findings of the *En Banc* Resolution. Commissioner Sarmiento pointed out that Tambunting could be considered a dual citizen. Moreover, Tambunting effectively renounced his American citizenship when he filed his certificates of candidacy in 2001 and 2004 and ran for public office.

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[5] *Id.* at 40.

Cordora filed a motion for reconsideration which raised the same grounds and the same arguments in his complaint. In its Resolution promulgated on 20 February 2007, the COMELEC *En Banc* dismissed Cordora's motion for reconsideration for lack of merit.

The Issue

Cordora submits that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that there is no sufficient evidence to support probable cause that may warrant the prosecution of Tambunting for an election offense.

Cordora's petition is not an action to disqualify Tambunting because of Tambunting's failure to meet citizenship and residency requirements. Neither is the present petition an action to declare Tambunting a non-Filipino and a non-resident. The present petition seeks to prosecute Tambunting for knowingly making untruthful statements in his certificates of candidacy.

The Ruling of the Court

The petition has no merit. We affirm the ruling of the COMELEC *En Banc*.

Whether there is Probable Cause to Hold Tambunting for Trial for Having Committed an Election Offense

There was no grave abuse of discretion in the COMELEC *En Banc's* ruling that there is no sufficient and convincing evidence to support a finding of probable cause to hold Tambunting for trial for violation of Section 74 in relation to Section 262 of the Omnibus Election Code.

Probable cause constitutes those facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed. Determining probable cause is an intellectual activity premised on the prior physical presentation or submission of documentary or testimonial proofs either confirming, negating or qualifying the allegations in the complaint.[6]

[6] *Kilosbayan, Inc. v. COMELEC*, 345 Phil. 1141, 1173 (1997).

Section 74 of the Omnibus Election Code reads as follows:

> ***Contents of certificate of candidacy.*** — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; x x x the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
>
> xxx xxx xxx
>
> The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Section 262 of the Omnibus Election Code, on the other hand, provides that violation of Section 74, among other sections in the Code, shall constitute an election offense.

Tambunting's Dual Citizenship

Tambunting does not deny that he is born of a Filipino mother and an American father. Neither does he deny that he underwent the process involved in INS Form I-130 (Petition for Relative) because of his father's citizenship. Tambunting claims that because of his parents' differing citizenships, he is both Filipino and American by birth. Cordora, on the other hand, insists that Tambunting is a naturalized American citizen.

We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting

acquired at birth. The certification from the Bureau of Immigration which Cordora presented contained two trips where Tambunting claimed that he is an American. However, the same certification showed nine other trips where Tambunting claimed that he is Filipino. Clearly, Tambunting possessed dual citizenship prior to the filing of his certificate of candidacy before the 2001 elections. The fact that Tambunting had dual citizenship did not disqualify him from running for public office.[7]

Requirements for dual citizens from birth who desire to run for public office

We deem it necessary to reiterate our previous ruling in *Mercado v. Manzano*, wherein we ruled that dual citizenship is not a ground for disqualification from running for any elective local position.

To begin with, dual citizenship is different from dual allegiance. The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:

(1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;

(2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country;

(3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.

There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state;

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[7] See *Valles v. Commission on Elections*, 392 Phil. 327 (2000).

but the above cases are clearly possible given the constitutional provisions on citizenship.

Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition.

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[I]n including §5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens *per se* but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship" in R.A. No. 7160, §40(d) and in R.A. No. 7854, §20 must be understood as referring to "dual allegiance." Consequently, **persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.** As Joaquin G. Bernas, one of the most perceptive members of the Constitutional Commission, pointed out: "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control."

By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual has not effectively renounced his foreign citizenship. That is of no moment as the following discussion on §40(d) between Senators Enrile and Pimentel clearly shows:

> SENATOR ENRILE. Mr. President, I would like to ask clarification of line 41, page 17: "Any person with dual citizenship" is disqualified to run for any elective local position. Under the present Constitution, Mr. President, someone whose mother is a citizen of the Philippines but his father is a foreigner

is a natural-born citizen of the Republic. There is no requirement that such a natural-born citizen, upon reaching the age of majority, must elect or give up Philippine citizenship.

On the assumption that this person would carry two passports, one belonging to the country of his or her father and one belonging to the Republic of the Philippines, may such a situation disqualify the person to run for a local government position?

SENATOR PIMENTEL. To my mind, Mr. President, it only means that at the moment when he would want to run for public office, he has to repudiate one of his citizenships.

SENATOR ENRILE. Suppose he carries only a Philippine passport but the country of origin or the country of the father claims that person, nevertheless, as a citizen? No one can renounce. There are such countries in the world.

SENATOR PIMENTEL. Well, the very fact that he is running for public office would, in effect, be an election for him of his desire to be considered a Filipino citizen.

SENATOR ENRILE. But, precisely, Mr. President, the Constitution does not require an election. Under the Constitution, a person whose mother is a citizen of the Philippines is, at birth, a citizen without any overt act to claim the citizenship.

SENATOR PIMENTEL. Yes. What we are saying, Mr. President, is: Under the Gentleman's example, if he does not renounce his other citizenship, then he is opening himself to question. So, if he is really interested to run, the first thing he should do is to say in the Certificate of Candidacy that: "I am a Filipino citizen, and I have only one citizenship."

SENATOR ENRILE. But we are talking from the viewpoint of Philippine law, Mr. President. He will always have one citizenship, and that is the citizenship invested upon him or her in the Constitution of the Republic.

SENATOR PIMENTEL. That is true, Mr. President. But if he exercises acts that will prove that he also acknowledges other

citizenships, then he will probably fall under this disqualification.[8] (Emphasis supplied)

We have to consider the present case in consonance with our rulings in *Mercado v. Manzano,*[9] *Valles v. COMELEC,*[10] and *AASJS v. Datumanong.*[11] *Mercado* and *Valles* involve similar operative facts as the present case. Manzano and Valles, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli*. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:

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[8] 367 Phil. 132, 144-145, 147-149 (1999). Citations omitted.

[9] 367 Phil. 132 (1999).

[10] 392 Phil. 327 (2000).

[11] G.R. No. 160869, 11 May 2007, 523 SCRA 108.

I _____ , solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization.[12] Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC*,[13] *Velasco v. COMELEC*,[14] and *Japzon v. COMELEC*,[15] all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.

Tambunting's residency

Cordora concluded that Tambunting failed to meet the residency requirement because of Tambunting's naturalization

[12] *Id.* at 117.

[13] G.R. No. 179848, 29 November 2008.

[14] G.R. No. 180051, 24 December 2008.

[15] G.R. No. 180088, 19 January 2009.

as an American. Cordora's reasoning fails because Tambunting is not a naturalized American. Moreover, residency, for the purpose of election laws, includes the twin elements of the fact of residing in a fixed place and the intention to return there permanently,[16] and is not dependent upon citizenship.

In view of the above, we hold that Cordora failed to establish that Tambunting indeed willfully made false entries in his certificates of candidacy. On the contrary, Tambunting sufficiently proved his innocence of the charge filed against him. Tambunting is eligible for the office which he sought to be elected and fulfilled the citizenship and residency requirements prescribed by law.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the Resolutions of the Commission on Elections *En Banc* dated 18 August 2006 and 20 February 2007 in EO Case No. 05-17.

SO ORDERED.

Puno, C.J., Quisumbing, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago, Tinga, and *Velasco, Jr., JJ.,* on official leave.

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[16] See *Romualdez-Marcos v. Commission on Elections,* G.R. No. 119976, 18 September 1995, 248 SCRA 300.

EN BANC

[A.C. No. 5338. February 23, 2009]

EUGENIA MENDOZA, *complainant, vs.* **ATTY. VICTOR V. DECIEMBRE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; NOT A RIGHT BUT MERELY A PRIVILEGE BESTOWED UPON THOSE WHO POSSESS A HIGH SENSE OF MORALITY, HONESTY AND FAIR DEALING.— The practice of law is not a right but merely a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. A high sense of morality, honesty and fair dealing is expected and required of members of the bar. They must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times.

2. ID.; ID.; DISBARMENT; A LAWYER MAY BE DISCIPLINED FOR ACTS COMMITTED EVEN IN HIS PRIVATE CAPACITY FOR ACTS WHICH TEND TO BRING REPROACH ON THE LEGAL PROFESSION; CASE AT BAR. — The fact that there is no attorney-client relationship in this case and the transactions entered into by respondent were done in his private capacity cannot shield respondent, as a lawyer, from liability. A lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. Indeed, there is no distinction as to whether the transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another. In this case, evidence abounds that respondent has failed to live up to the standards required of members of the legal profession. Specifically, respondent has transgressed provisions of the Code of Professional Responsibility, x x x.

3. POLITICAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF DISBARMENT,

EXPLAINED.— While the power to disbar is exercised with great caution and is withheld whenever a lesser penalty could accomplish the end desired, the seriousness of respondent's offense compels the Court to wield its supreme power of disbarment. Indeed, the Court will not hestitate to remove an erring attorney from the esteemed brotherhood of lawyers where the evidence calls for it. This is because in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court, with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.

APPEARANCES OF COUNSEL

Punzalan and Associates Law Office for complainant.

R E S O L U T I O N

***PER CURIAM*:**

Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority for there is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of law.[1]

Before the Court is the Petition filed by Eugenia Mendoza (complainant) dated September 19, 2000, seeking the disbarment of Atty. Victor V. Deciembre (respondent) for his acts of fraudulently filling up blank postdated checks without her authority and using the same for filing unfounded criminal suits against her.

Complainant, a mail sorter at the Central Post Office Manila, averred that: On October 13, 1998, she borrowed from Rodela

[1] *Radjaie v. Alovera*, 392 Phil. 1, 17 (2000).

Loans, Inc., through respondent, the amount of ₱20,000.00 payable in six months at 20% interest, secured by 12 blank checks, with numbers 47253, 47256 to 47266, drawn against the Postal Bank. Although she was unable to faithfully pay her obligations on their due dates, she made remittances, however, to respondent's Metrobank account from November 11, 1998 to March 15, 1999 in the total sum of ₱12,910.00.[2] Claiming that the amounts remitted were not enough to cover the penalties, interests and other charges, respondent warned complainant that he would deposit Postal Check No. 47253 filled up by him on March 30, 1999 in the amount of ₱16,000.00. Afraid that respondent might sue her in court, complainant made good said check and respondent was able to encash the same on March 30, 1999. Thereafter, complainant made subsequent payments to the Metrobank account of respondent from April 13, 1999 to October 15, 1999,[3] thereby paying respondent the total sum of ₱35,690.00.[4]

Complainant further claimed that, later, respondent filled up two of the postal checks she issued in blank, Check Nos. 47261 and 47262 with the amount of ₱50,000.00 each and with the dates January 15, 2000 and January 20, 2000 respectively, which respondent claims was in exchange for the ₱100,000.00 cash that complainant received on November 15, 1999. Complainant insisted however that she never borrowed ₱100,000.00 from respondent and that it was unlikely that respondent would lend her, a mail sorter with a basic monthly salary of less than ₱6,000.00, such amount. Complainant also claimed that respondent victimized other employees of the Postal Office by filling up,

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[2] ₱1,150.00 on November 11, 1998; ₱1,300.00 on December 11, 1998; ₱2,100.00 on January 12, 1999; ₱ 500.00 on January 13, 1999; ₱3,930.00 on February 15, 1999; and ₱3,930.00 on March 15, 1999.

[3] ₱1,330.00 on April 13, 1999; ₱1,330.00 on May 12, 1999; ₱1,330.00 on July 13, 1999; ₱1,460.00 on September 23, 1999, and ₱1,330.00 on October 15, 1999.

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

without authorization, blank checks issued to him as condition for loans.[5]

In his Comment dated January 18, 2000, respondent averred that his dealings with complainant were done in his private capacity and not as a lawyer, and that when he filed a complaint for violation of *Batas Pambansa Blg*. (B.P. Blg.) 22 against complainant, he was only vindicating his rights as a private citizen. He alleged further that: it was complainant who deliberately deceived him by not honoring her commitment to their November 15, 1999 transaction involving ₱100,000.00 and covered by two checks which bounced for the reason "account closed"; the October 13, 1999 transaction was a separate and distinct transaction; complainant filed the disbarment case against him to get even with him for filing the estafa and B.P. Blg. 22 case against the former; complainant's claim that respondent filled up the blank checks issued by complainant is a complete lie; the truth was that the checks referred to were already filled up when complainant affixed her signature thereto; it was unbelievable that complainant would issue blank checks, and that she was a mere low-salaried employee, since she was able to maintain several checking accounts; and if he really intended to defraud complainant, he would have written a higher amount on the checks instead of only ₱50,000.00.[6]

The case was referred to the Integrated Bar of the Philippines[7] (IBP), and the parties were required to file their position papers.[8]

In her Position Paper, complainant, apart from reiterating her earlier claims, alleged that respondent, after the hearing on the disbarment case before the IBP on September 5, 2001, again filled up three of her blank checks, Check Nos. 47263, 47264 and 47265, totaling ₱100,000.00, to serve as basis for another criminal complaint, since the earlier estafa and B.P.

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[5] *Rollo*, p. 6.

[6] *Id.* at 53-57.

[7] Per Resolution dated February 28, 2001, *id*. at 60.

[8] *Id.* at 64.

Blg. 22 case filed by respondent against her before the Office of the Prosecutor of Pasig City was dismissed on August 14, 2000.[9]

Respondent insisted in his Position Paper, however, that complainant borrowed ₱100,000.00 in exchange for two postdated checks, and that since he had known complainant for quite some time, he accepted said checks on complainant's assurance that they were good as cash.[10]

Investigating Commissioner Wilfredo E.J.E. Reyes submitted his Report dated September 6, 2002, finding respondent guilty of dishonesty and recommended respondent's suspension from the practice of law for one year.[11] The Report was adopted and approved by the IBP Board of Governors in its Resolution dated October 19, 2002.[12] Respondent filed a Motion for Reconsideration which was denied, however, by the IBP Board of Governors on January 25, 2003 on the ground that it no longer had jurisdiction on the matter, as the same was already endorsed to the Supreme Court.[13]

On June 9, 2003 this Court's Second Division issued a Resolution remanding the case to the IBP for the conduct of formal investigation, as the Report of Commissioner Reyes was based merely on the pleadings submitted.[14]

After hearings were conducted,[15] Investigating Commissioner Dennis A. B. Funa submitted his Report dated December 5, 2006 finding respondent guilty of gross misconduct and violation

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[9] *Rollo*, pp. 67-71.

[10] *Id.* at 227-228.

[11] *Id.* at 244-246.

[12] *Id.* at 241.

[13] *Id.* at 253-258.

[14] *Id.* at 248-251.

[15] On August 2, 2004, September 9, 2004, September 24, 2004, January 27, 2005, June 28, 2005, January 10, 2006 and November 17, 2006.

of the Code of Professional Responsibility, and recommended respondent's suspension for three years.[16]

Commissioner Funa held that while it was difficult at first to determine who between complainant and respondent was telling the truth, in the end, respondent himself, with his own contradicting allegations, showed that complainant's version should be given more credence.[17]

Commissioner Funa noted that although complainant's total obligation to respondent was only ₱24,000.00, since the loan obtained by complainant on October 13, 1998 was ₱20,000.00 at 20% interest payable in six months, by April 13, 1999, however, complainant had actually paid respondent the total amount of ₱30,240.00. Thus, even though the payment was irregularly given, respondent actually earned more than the agreed upon 20% interest. Moreover, the amounts of ₱50,000.00 as well as the name of the payee in the subject checks were all typewritten.[18]

Commissioner Funa also gave credence to complainant's claim that it was respondent's *modus operandi* to demand a certain amount as "settlement" for the dropping of estafa complaints against his borrowers. As Commissioner Funa explains:

> [A] complaint for estafa/violation of BP 22 was filed against [complainant] before the Prosecutor's Office in Pasig City on June 21, 2000. On August 14, 2000, the Prosecutor's Office dismissed the complaint. On October 2, 2000, Complainant filed this disbarment case. About one year later, or on September 5, 2001, Complainant was surprised to receive a demand letter demanding payment once again for another ₱100,000.00 corresponding to another three checks, Check Nos. 0047263, 0047264 and 0047265.
>
> Furthermore, Respondent filed another criminal complaint for estafa/violation of BP 22 dated October 17, 2001, this time before the QC

[16] *Rollo*, pp. 1006, 1019.

[17] *Rollo*, p. 1007.

[18] *Id.* at 1007-1009.

Prosecutor's Office. The prosecutor's office recommended the filing of the criminal case for one of the checks.

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Respondent's version, on the other hand, is that Check Nos. 0047261 and 0047262 were given to him for loans (rediscounting) contacted (sic) on November 15, 1999 *and not* for a loan contracted on October 13, 1998. x x x He claims that the October 13, 1998 transaction is an earlier and different transaction. x x x On the very next day, or on November 16, 1999, Complainant again allegedly contracted another loan for another ₱100,000.00 for which Complainant allegedly issued the following Postal Bank checks [Check No. 0047263 dated May 16, 2001 for ₱20,000.00; Check No. 0047264 dated May 30, 2001 for ₱30,000.00 and Check No. 0047265 dated June 15, 2001 for ₱50,000.00].

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Oddly though, Respondent never narrated that Complainant obtained a second loan on November 16, 1999 in his Answer [dated January 18, 2000] and in his Position Paper [dated October 8, 2001]. He did not even discuss it in his Motion for Reconsideration dated December 20, 2002, although he attached the Resolution of the QC Prosecutor's Office. Clearly, the November 16, 1999 transaction **was a mere concoction that did not actually occur**. It was a mere afterthought. Respondent once again filled-up three of the other checks in his possession (checks dated May 16, 2001, May 30, 2001 and June 15, 2001) so that he can *again file* another estafa/BP 22 case against Complainant (October 17, 2001) AFTER the earlier complaint he had filed before the Pasig City Prosecutor's Office had been dismissed (August 14, 2000) and AFTER herein Complainant had filed this disbarment case (October 2, 2000).

More telling, and this is where Respondent gets caught, are the circumstances attending this second loan of November 16, 1999. In addition to not mentioning it at all in his Answer, his Position Paper, and his Motion for Reconsideration, which makes it very strange, is that fact that he alleges that the loan was contracted on November 16, 1999 for which Complainant supposedly issued checks dated May 16, 2001, May 30, 2001 and June 15, 2001. Note that May 16, 2001 is eighteen (18 months), or 1 year and 6 months, from November 16, 1999. This is strangely a long period for loans of this nature. This loan was supposedly not made in writing, only verbally. With no

collaterals and no guarantors. Clearly, **this is a non-existent transaction**. It was merely concocted by Respondent.

More importantly, and this is where **Respondent commits his fatal blunder** thus exposing his illegal machinations, Complainant allegedly received ₱100,000.00 in cash on November 16, 1999 for which Complainant gave Respondent, in return, checks also amounting to ₱100,000.00. The checks were supposedly dated May 16, 2001, May 30, 2001 and June 15, 2001 x x x.

Now then, would not Respondent suffer a financial loss if he gave away ₱100,000.00 on November 16, 1999 and then also receive ₱100,000.00 on May 16, 2001 or 1 year and 6 months later? A person engaged in lending business would want to earn interest. The same also with a person re-discounting checks. In this instance, in his haste to concoct a story, Respondent **forgot to factor in the interest**. At 20% interest, assuming that it is per annum, for 1½ years, Respondent should have collected from Complainant at least ₱130,000.00. And yet the checks he filled up totaled only ₱100,000.00. The same is true in re-discounting a check. If Complainant gave Respondent ₱100,000.00 in checks, Respondent should be giving Complainant an amount less than ₱100,000.00. **This exposes his story as a fabrication**.

The same observations can be made of the first loan of ₱100,000.00 secured by Check Nos. 0047261 and 0047262.

More strangely, during the course of the entire investigation, Respondent never touched on what transpired on the dates of November 15 and 16, 1999. Consider that Complainant's position is that no such transaction took place on November 15 and 16. And yet, Respondent never made any effort to establish that Complainant borrowed ₱100,000.00 on November 15 and then another ₱100,000.00 again on November 16. Respondent merely focused on establishing that Complainant's checks bounced — a fact already admitted several times by the Complainant — and the reasons for which were already explained by Complainant. This only shows the lack of candor of Respondent.[19]

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[19] *Rollo*, pp. 1010-1014.

We take note further that Complainant is a mere mail sorter **earning less than ₱6,000.00 per month**. Who would lend ₱200,000.00 to an employee earning such a salary, nowadays, and not even secure such a loan with a written document or a collateral? It defies realities of finance, economy and business. It even defies common sense.[20]

Commissioner Funa also took note that the instant case had practically the same set of facts as in *Olbes v. Deciembre*[21] and *Acosta v. Deciembre*.[22] In *Olbes*, complainants therein, who were also postal employees, averred that respondent without authority filled up a total of four checks to represent a total of ₱200,000.00. In *Acosta*, the complainant therein, another postal employee, averred that respondent filled up two blank checks for a total of ₱100,000.00. *Acosta*, however, was dismissed by Commissioner Lydia Navarro on the ground that it did not involve any lawyer-client relationship, which ground, Commissioner Funa believes, is erroneous.[23]

On May 31, 2007, the IBP Board of Governors issued a resolution adopting and approving Commissoner Funa's Report, but modifying the penalty, as follows:

RESOLUTION NO. XVII-2007-219
Adm. Case No. 5338
Eugenia Mendoza vs.
Atty. Victor V. Deciembre

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's gross misconduct and for practically found guilty of committing the same set of facts alleged in AC 5365, Atty. Victor V. Deciembre is hereby*

[20] *Id.* at 1017.

[21] A.C. No. 5365, April 27, 2005, 457 SCRA 341.

[22] A.C. No. 5376.

[23] *Rollo*, pp. 1017-1018.

***SUSPENDED INDEFINITELY** from the practice of law to be served successively after the lifting of Respondent's Indefinite Suspension.*[24]

Although no motion for reconsideration was filed before the IBP Board of Governors, nor a petition for review before this Court as reported by IBP and Office of the Bar Confidant, the Court considers the IBP Resolution merely recommendatory and therefore would not attain finality, pursuant to par. (b), Section 12, Rule 139-B of the Rules of Court. The IBP elevated to this Court the entire records of the case for appropriate action.

The Court agrees with the findings of the IBP, but finds that disbarment and not just indefinite suspension is in order.

The practice of law is not a right but merely a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.[25] A high sense of morality, honesty and fair dealing is expected and required of members of the bar.[26] They must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times.[27]

The fact that there is no attorney-client relationship in this case and the transactions entered into by respondent were done in his private capacity cannot shield respondent, as a lawyer, from liability.

A lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public.[28] Indeed, there is no distinction as to whether the

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[24] *Rollo,* p. 998.

[25] *Yap-Paras v. Paras,* A.C. No. 4947, February 14, 2005, 451 SCRA 194, 202.

[26] *Tejada v. Palaña,* A.C. No. 7434, August 23, 2007, 530 SCRA 771, 776.

[27] *Sanchez v. Somoso,* 459 Phil. 209, 212 (2003).

[28] *Paras v. Paras, supra,* note 25.

transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.[29]

In this case, evidence abounds that respondent has failed to live up to the standards required of members of the legal profession. Specifically, respondent has transgressed provisions of the Code of Professional Responsibility, to wit:

> CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01. — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> xxx xxx xxx
>
> CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.
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> xxx xxx xxxx
>
> Rule 7.03. A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As correctly observed by IBP Investigating Commissioner Funa, respondent failed to mention in his Comment dated January 18, 2000, in his Position Paper dated October 8, 2001 and in his Motion for Reconsideration dated December 20, 2002, the ₱100,000.00 loan which complainant supposedly contracted on November 16, 1999. It is also questionable why the checks dated May 16, 2001, May 30, 2001 and June 15, 2001 which were supposedly issued to secure a loan contracted about 18 months earlier, *i.e.* November 16, 1999, were made without any interest. The same is true with the checks dated January 15 and 20, 2000 in the total sum of ₱100,000.00, which were supposed to secure a loan contracted on November 15, 1999, for the same amount. Considering these circumstances and

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[29] *Cojuangco, Jr. v. Palma*, 481 Phil. 646, 655 (2004).

the sequence of dates when respondent filed his criminal cases against complainant, and complainant her disbarment case against respondent, what truly appears more believable is complainant's claim that respondent was merely utilizing the blank checks, filling them up, and using them as bases for criminal cases in order to harass complainant.

The Court also notes that the checks being refuted by complainant, dated January 15 and 20, 2000, May 16, 2001, May 30, 2001 and June 15, 2001[30] had its dates, amounts and payee's name all typewritten, while the blanks on the check for ₱16,000.00 dated March 30, 1999 which complainant used to pay part of her original loan, were all filled up in her handwriting.[31]

It is also observed that the present case was not the only instance when respondent committed his wrongful acts. In *Olbes*,[32] complainants therein contracted a loan from respondent in the amount of ₱10,000.00 on July 1, 1999, for which they issued five blank checks as collateral. Notwithstanding their full payment of the loan, respondent filled up four of the blank checks with the amount of ₱50,000.00 each with different dates of maturity and used the same in filing estafa and B.P. Blg. 22 cases against complainants. The Court, in imposing the penalty of indefinite suspension on respondent, found his propensity for employing deceit and misrepresentation as reprehensible and his misuse of the filled up checks, loathsome.[33]

In *Acosta*,[34] complainant therein also averred that on August 1, 1998, she borrowed ₱20,000.00 from respondent with an interest of 20% payable in six months and guaranteed by twelve blank checks. Although she had already paid the total amount of ₱33,300.00, respondent still demanded payments from her, and for her failure to comply therewith, respondent filed a case

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[30] *Rollo*, pp. 92-93, 219-221.

[31] *Id.* at 14.

[32] *Olbes v. Deciembre, supra* note 21.

[33] *Id.*

[34] *Acosta v. Deciembre, supra* note 22.

against her before the City Prosecutor of Marikina City, using two of her blank checks which respondent filled up with the total amount of ₱100,000.00. Unfortunately, the complaint was dismissed by IBP Investigating Commissioner Navarro on October 2, 2001 on the ground that the said transaction did not involve any lawyer-client relationship.[35] As correctly observed by Commissioner Funa, such conclusion is erroneous, for a lawyer may be disciplined even for acts not involving any attorney-client relationship.

As manifested by these cases, respondent's offenses are manifold. First, he demands excessive payments from his borrowers; then he fills up his borrowers' blank checks with fictitious amounts, falsifying commercial documents for his material gain; and then he uses said checks as bases for filing unfounded criminal suits against his borrowers in order to harass them. Such acts manifest respondent's perversity of character, meriting his severance from the legal profession.

While the power to disbar is exercised with great caution and is withheld whenever a lesser penalty could accomplish the end desired,[36] the seriousness of respondent's offense compels the Court to wield its supreme power of disbarment. Indeed, the Court will not hestitate to remove an erring attorney from the esteemed brotherhood of lawyers where the evidence calls for it.[37] This is because in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court, with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved

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[35] *Rollo*, pp. 262-266.

[36] *Dantes v. Dantes*, A.C. No. 6486. September 22, 2004, 438 SCRA 582, 590.

[37] *Ting-Dumali v. Torres*, A.C. No. 5161, April 14, 2004, 427 SCRA 108, 120.

themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[38]

As respondent's misconduct brings intolerable dishonor to the legal profession, the severance of his privilege to practice law for life is in order.

WHEREFORE, Atty. Victor V. Deciembre is hereby found *GUILTY of GROSS MISCONDUCT and VIOLATION* of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility. He is DISBARRED from the practice of law and his name is ordered stricken off the Roll of Attorneys effective immediately.

Let copies of this Resolution be furnished the Office of the Bar Confidant which shall forthwith record it in the personal files of respondent; all the courts of the Philippines; the Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; and all administrative and quasi-judicial agencies of the Republic of the Philippines.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago, Tinga, and *Velasco, Jr., JJ.,* on official leave.

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[38] *Paras v. Paras, supra* note 25, at 201.

EN BANC

[A.M. No. RTJ-08-2103. February 23, 2009]
(Formerly OCA I.P.I. No. 07-2664-RTJ)

EDNA S.V. OGKA BENITO, *complainant, vs.* **RASAD G. BALINDONG, Presiding Judge, Regional Trial Court, Malabang, Lanao del Sur, Branch 12,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; PATENT DISREGARD OF SIMPLE, ELEMENTARY AND WELL-KNOWN RULES, A CASE OF. — A patent disregard of simple, elementary and well-known rules constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with laws and procedural rules. They must know the law and apply it properly in good faith. They are likewise expected to keep abreast of prevailing jurisprudence. For a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him. Respondent's gross ignorance of the law constituted inexcusable incompetence which was anathema to the effective dispensation of justice.

2. ID.; ID.; ID.; RESPONDENT JUDGE'S ACT OF TAKING COGNIZANCE OF A CASE WHICH IS NOT WITHIN HIS COURT'S JURISDICTION CONSTITUTES GROSS IGNORANCE OF THE LAW; IMPOSABLE PENALTY. — x x x Under Sections 14 and 27 of RA 6770, no court shall hear any appeal or application for a remedy against the decision or findings of the Ombudsman, except the Supreme Court, on a pure question of law. Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman. **No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on [a] pure question of law.** x x x

*The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may requir*e. However, in *Fabian v. Desierto*, we enunciated the rule that appeals from the decisions of the Ombudsman in administrative disciplinary cases **should be taken to the CA**. Following our ruling in *Fabian*, the Ombudsman issued Administrative Order No. 17 amending Section 7, Rule III of Administrative Order No. 07: Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.** x x x These provisions clearly show that respondent had no jurisdiction to take cognizance of the petition and to issue his subsequent orders. He proceeded against settled doctrine, an act constituting gross ignorance of the law or procedure. Gross ignorance of the law or procedure is a serious charge under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, punishable by either dismissal from service, suspension or a fine of more than ₱20,000 but not exceeding ₱40,000. Since this is respondent's first offense, we deem it proper to impose upon him a fine of ₱30,000.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED IN CASE AT BAR. — When respondent entertained SCA No. 12-181, issued a TRO and writ of preliminary injunction and subsequently granted the petition, he acted contrary to law, rules and jurisprudence. In doing so, he consented to the filing of an unlawful suit, in violation of the Lawyer's Oath. A judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers. Thus, respondent violated Canons 1 and 11 of the Code of Professional Responsibility (CPR): Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and **promote respect for law and legal processe**s. x x x Canon 11. A lawyer shall

observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others. Respondent's gross ignorance of the law also runs counter to Canons 5 and 6 of the CPR: Canon 5. A lawyer **shall keep abreast of legal developments,** participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence. Canon 6. These Canons **shall apply to lawyers in government service in the discharge of their official tasks.**

R E S O L U T I O N

CORONA, *J.*:

In a complaint dated April 30, 2007, complainant Dr. Edna S.V. Ogka Benito, then acting mayor of the Municipality of Balabagan, Lanao del Sur, charged respondent Judge Rasad G. Balindong of the Regional Trial Court (RTC), Malabang, Lanao del Sur, Branch 12, with gross ignorance of the law.

Complainant alleged that on May 3, 2005, she filed administrative and criminal complaints against Mamarinta G. Macabato, then municipal treasurer of Balabagan, Lanao del Sur, for grave misconduct in the Office of the Ombudsman-Mindanao (Ombudsman) docketed as OMB-M-A-05-175-E. On September 15, 2005, the Ombudsman impleaded then Mayor Hadji Amer R. Sampiano as co-respondent. Complainant claimed that these respondents refused to pay her salary as vice mayor since July 1, 2004 despite repeated demands.[1]

On May 16, 2006, the Ombudsman rendered a decision in that case finding respondents therein guilty of conduct prejudicial to the best interest of the service and imposing on them the penalty of suspension from office without pay for a period of nine months. It further directed the Regional Secretary[2] of the Department of the Interior and Local Government, Autonomous

[1] *Rollo*, pp. 1 and 20.

[2] Ansaruddin Alonto Adiong.

Region in Muslim Mindanao (DILG-ARMM) in Cotabato City to immediately implement the decision.[3]

In compliance with the decision of the Ombudsman, the Regional Secretary of the DILG-ARMM issued Department Order (D.O.) No. 2006-38 dated September 1, 2006 implementing said decision.[4] Due to the suspension of Mayor Sampiano, complainant was sworn in as acting mayor.[5]

Meanwhile, on September 4, 2006, respondents in OMB-M-A-05-175-E filed a petition for *certiorari* and prohibition[6] in the RTC of Malabang, Lanao del Sur, Branch 12. The petition was raffled to the sala of herein respondent and docketed as Special Civil Action (SCA) No. 12-181. Their prayer was to annul and set aside D.O. No. 2006-38 of the DILG-ARMM and prohibit its implementation.[7]

On the same date, respondent issued an order granting a temporary restraining order (TRO) effective for 72 hours directing the Regional Secretary of the DILG-ARMM to cease, desist and refrain from implementing the D.O.[8]

In an order dated September 6, 2006, respondent extended the TRO for a period of 20 days.[9]

On September 25, 2006, respondent issued another order for the issuance of a writ of preliminary injunction directing the Regional Secretary to cease, desist and refrain from implementing D.O. No. 2006-38.

On October 5, 2006, respondent rendered an "order"/decision annulling D.O. No. 2006-38.[10] This decision and the writ of

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[3] *Rollo*, p. 44.

[4] *Id.*, p. 1.

[5] *Id.*, p. 84.

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

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

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

[9] *Id*.

[10] *Id.*, pp. 72-80.

preliminary injunction were annulled by the Court of Appeals (CA) in its February 8, 2007 decision.[11] The CA held that the RTC had no jurisdiction over the petition filed by the respondents in OMB-M-A-05-175-E pursuant to Sections 14 and 27 of Republic Act No. (RA) 6770[12] (Ombudsman Act of 1989) and Section 7, Rule III of the Rules of Procedure of the Ombudsman, as amended by Administrative Order No. 17-03.

Complainant asserted that, despite the clear provisions of the law and procedure, respondent took cognizance of SCA No. 12-181 and issued the TROs, writ of preliminary injunction and October 5, 2006 decision. Hence, she submitted that respondent should be administratively disciplined because of his gross ignorance of the law which prejudiced the rights of her constituents in Balabagan, Lanao del Sur.[13]

Respondent countered that he issued the orders in good faith. He was not moved by corrupt motives or improper considerations. This could be shown by the fact that complainant filed this complaint only after eight months from the resolution of SCA No. 12-181. Considering that complainant failed to establish bad faith or malevolence on his part, the complaint against him should be dismissed.

The Office of the Court Administrator (OCA), in its evaluation dated September 24, 2007, found that the pertinent provisions of the law were clear. It stated that:

> … the issuance of a TRO and writ of preliminary injunction is not a mere deficiency in prudence, or lapse of judgment by respondent judge but is a blatant disregard of basic rules constitutive of gross ignorance of the law. In the first place, respondent Judge should have refrained from taking cognizance of the said special civil action when it was raffled to his court, he ought to know this, yet he did otherwise.

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[11] *Id.*, pp. 82-94. Docketed as CA-G.R. SP No. 01277.

[12] Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes."

[13] *Rollo*, p. 2.

It recommended that respondent be held administratively liable for gross ignorance of the law and fined ₱21,000.[14]

We agree with the findings and evaluation of the OCA but we modify the penalty.

A patent disregard of simple, elementary and well-known rules constitutes gross ignorance of the law.[15] Judges are expected to exhibit more than just cursory acquaintance with laws and procedural rules.[16] They must know the law and apply it properly in good faith.[17] They are likewise expected to keep abreast of prevailing jurisprudence.[18] For a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him. Respondent's gross ignorance of the law constituted inexcusable incompetence which was anathema to the effective dispensation of justice.

In SCA No. 12-181, respondents in OMB-M-A-05-175-E sought to annul and set aside D.O. No. 2006-38 of the DILG-ARMM and prohibit its implementation. Since D.O. No. 2006-38 was issued merely to implement the decision of the Ombudsman, respondents in OMB-M-A-05-175-E were actually questioning this decision and seeking to enjoin its implementation by filing a petition for *certiorari* and prohibition in the RTC.

This is not allowed under the law, rules and jurisprudence. Under Sections 14 and 27 of RA 6770, no court shall hear any appeal or application for a remedy against the decision or findings of the Ombudsman, except the Supreme Court, on a pure question of law.

Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the

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[14] *Id.*, pp. 3-7.

[15] *Rivera v. Mirasol*, A.M. No. RTJ-04-1885, 14 July 2004, 434 SCRA 315, 320, citing A*urillo, Jr. v. Francisco*, A.M. No. RTJ-93-1097, 12 August 1994, 235 SCRA 283, 289.

[16] *Boiser v. Aguirre, Jr.*, A.M. No. RTJ-04-1886, 16 May 2005, 458 SCRA 430, 438.

[17] *Id*.

[18] *Id.*, p. 439, citing *Office of the Court Administrator v. Judge Lorenzo B. Veneracion*, A.M. No. RTJ-99-1432, 21 June 2000, 334 SCRA 145.

Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on [a] pure question of law.

xxx xxx xxx

Section 27. Effectivity and Finality of Decisions. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory. A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

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Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

However, in *Fabian v. Desierto*,[19] we enunciated the rule that appeals from the decisions of the Ombudsman in administrative disciplinary cases **should be taken to the CA**. Following our ruling in *Fabian*, the Ombudsman issued Administrative Order No. 17[20] amending Section 7, Rule III[21] of Administrative Order No. 07:[22]

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[19] G.R. No. 129742, 16 September 1998, 295 SCRA 470.

[20] Dated September 15, 2003.

[21] Procedure in Administrative Cases.

[22] Rules of Procedure of the Office of the Ombudsman.

Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.**

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

These provisions clearly show that respondent had no jurisdiction to take cognizance of the petition and to issue his subsequent orders. He proceeded against settled doctrine, an act constituting gross ignorance of the law or procedure.[23]

Respondent's defense of good faith has no merit. Indeed, good faith and absence of malice, corrupt motives or improper considerations, are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[24] However

… good faith in situations of fallible discretion inheres only within the parameters of tolerable judgment and does not apply where the issues

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[23] *Zuno v. Cabredo*, A.M. No. RTJ-03-1779, 30 April 2003, 402 SCRA 75, 82, citing *Conducto v. Monzon*, A.M. No. MTJ-98-1147, 2 July 1998, 291 SCRA 619.

[24] *Santos v. How*, A.M. No. RTJ-05-1946, 26 January 2007, 513 SCRA 25, 36-37, citing *Balsamo v. Suan*, A.M. No. RTJ-01-1656, 17 September 2003, 411 SCRA 189, 200.

are so simple and the applicable legal principles evident and basic as to be beyond possible margins of error.[25]

If ordinary people are presumed to know the law,[26] judges are duty-bound to actually know and understand it. A contrary rule will not only lessen the faith of the people in the courts but will also defeat the fundamental role of the judiciary to render justice and promote the rule of law.

Gross ignorance of the law or procedure is a serious charge under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[27] punishable by either dismissal from service, suspension or a fine of more than ₱20,000 but not exceeding ₱40,000.[28] Since this is respondent's first offense, we deem it proper to impose upon him a fine of ₱30,000.

Members of the bench are enjoined to behave at all times in a way that promotes public confidence in the integrity and impartiality of the judiciary.[29] Respondent's act of taking cognizance of a case which was plainly not within his court's jurisdiction failed to meet the high standards of judicial conduct.

Pursuant to A.M. No. 02-9-02-SC,[30] this administrative case against respondent as a judge, based on grounds which are also grounds for disciplinary action against members of the Bar, shall

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[25] *Id.*, citing *Dantes v. Caguioa*, A.M. No. RTJ-05-1919, 27 June 2005, 461 SCRA 236, 246.

[26] This is embodied in the maxim "*ignorantia legis non excusat*" and finds statutory expression in Article 3 of the Civil Code which provides:

Article 3. Ignorance of the law excuses no one from compliance therewith.

[27] Took effect on October 1, 2001.

[28] Section 11, Rule 140.

[29] *Universal Motors Corporation v. Rojas, Sr.*, A.M. No. RTJ-03-1814, 26 May 2005, 459 SCRA 14, 25, citing *Rivera v. Mirasol*, A.M. No. RTJ-04-1885, 14 July 2004, 434 SCRA 315, 320.

[30] Dated September 17, 2002 and took effect on October 1, 2002.

be considered as disciplinary proceedings against such judge as a member of the Bar.[31]

When respondent entertained SCA No. 12-181, issued a TRO and writ of preliminary injunction and subsequently granted the petition, he acted contrary to law, rules and jurisprudence. In doing so, he consented to the filing of an unlawful suit, in violation of the Lawyer's Oath. A judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes.[32] He also fails to observe and maintain the esteem due to the courts and to judicial officers.[33] Thus, respondent violated Canons 1 and 11 of the Code of Professional Responsibility (CPR):

Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and **promote respect for law and legal processes**.

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Canon 11. A lawyer shall **observe and maintain the respect due to the courts and to judicial officers** and should insist on similar conduct by others. (Emphasis supplied)

Respondent's gross ignorance of the law also runs counter to Canons 5 and 6 of the CPR:

Canon 5. A lawyer **shall keep abreast of legal developments**, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

Canon 6. These Canons **shall apply to lawyers in government service in the discharge of their official tasks**. (Emphasis supplied)

Judges should be well-informed of existing laws, recent amendments and current jurisprudence, in keeping with their

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[31] *Maddela v. Dallong-Galicinao*, A.C. No. 6491, 31 January 2005, 450 SCRA 19, 25.

[32] See *Juan de la Cruz (Concerned Citizen of Legazpi City) v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 232.

[33] *Id*.

sworn duty as members of the bar (and bench) to keep abreast of legal developments.

For such violation of the Lawyer's Oath and Canons 1, 5, 6 and 11 of the CPR, respondent is fined in the amount of ₱10,000.[34]

WHEREFORE, Rasad G. Balindong, Presiding Judge of the Regional Trial Court, Malabang, Lanao del Sur, Branch 12 is hereby found GUILTY of gross ignorance of the law. He is *FINED* ₱30,000.

Respondent is further hereby *FINED* ₱10,000 for his violation of the Lawyer's Oath and Canons 1, 5, 6 and 11 of the Code of Professional Responsibility.

He is *STERNLY WARNED* that the commission of the same or similar acts shall be dealt with more severely.

Let this resolution be attached to the personal files of respondent in the Office of the Court Administrator and the Office of the Bar Confidant.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago and *Velasco, Jr., JJ.,* on official leave.

Tinga, J., on leave.

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[34] *Francia, Jr. v. Power Merge Corporation*, G.R. No. 162461, 23 November 2005, 476 SCRA 62, 72-73; *People v. Hon. Gacott, Jr.*, 312 Phil. 603, 611-613 (1995).

FIRST DIVISION

[G.R. No. 156541. February 23, 2009]

LUZ CAJIGAS and LARRY CAJIGAS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; PARAGRAPH 2(D), ARTICLE 315; ESTAFA; ELEMENTS.— The elements of estafa under paragraph 2(d), Article 315 of the RPC are (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency of funds to cover the check; and (3) damage to the payee.

2. REMEDIAL LAW; EVIDENCE; CONSPIRACY MUST BE ESTABLISHED WITH THE SAME QUANTUM OF PROOF AS THE CRIME ITSELF AND MUST BE SHOWN AS CLEARLY AS THE COMMISSION OF THE CRIME.— As a rule, conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime. In the present case, the prosecution failed to discharge its burden of establishing conspiracy between Luz and Larry based on proof beyond reasonable doubt. There was no proof, unlike in *People v. Isleta*, that Larry had knowledge that Luz, the issuer of the checks, had no funds in the bank. The following facts were not disputed: (1) it was Luz, not Larry, who usually purchased jewelries from Daisy; (2) it was Luz, not Larry, who issued and directly negotiated the checks as payment for the jewelries; and (3) the checks were all drawn against Luz's personal bank accounts. The previous transaction between Larry and Daisy involving a purchase order with Geegee Shopping Center was absolutely separate and different from the transactions between Luz and Daisy, which mainly involved the sale of jewelries. Besides, whether Larry had previously transacted with Daisy does not convincingly prove conspiracy between Luz and Larry in defrauding Daisy. Likewise, the fact that Daisy knew Larry longer than Luz does not prove Larry's

guilt for the crime charged. There is also no evidence on record to show that Larry had any agreement or understanding with his wife and co-accused Luz to defraud Daisy. In *Timbal v. Court of Appeals*, which involved an estafa case against a husband on account of a check issued by his wife, the Court held that the accused's mere presence at the scene of a crime would not by itself establish conspiracy, absent any evidence that he, by an act or series of acts, participated in the commission of fraud to the damage of the complainant.

3. CRIMINAL LAW; REVISED PENAL CODE; PARAGRAPH 2(D), ARTICLE 315; ESTAFA; IMPOSABLE PENALTY; EXPLAINED. — Considering that Luz is guilty beyond reasonable doubt for the crime of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818, Luz is sentenced to suffer the penalty provided under PD 818, thus: SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by: 1. The penalty of *reclusion temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua;* In Criminal Case No. RTC-1411, the total value of the dishonored checks is ₱33,758.21 while in Criminal Case No. RTC-1412, the total value of the checks is ₱55,000. Considering that the total face value of the checks in both criminal cases exceeds ₱22,000, the penalty of *reclusion temporal* should be imposed in its maximum period, which is from 17 years, 4 months and 1 day to 20 years, adding one year for each additional ₱10,000. Accordingly, in Criminal Case No. RTC-1411, one year is added to 20 years, for a total of 21 years of *reclusion perpetua*. In Criminal Case No. RTC-1412, three years are added to 20 years, for a total of 23 years of *reclusion perpetua*. Applying the Indeterminate Sentence Law, x x x the penalty prescribed under Article 315, paragraph 2(d) of the RPC, as amended by PD 818, is *reclusion temporal*. The

penalty next lower in degree is *prision mayor*. The minimum term of the indeterminate penalty should be anywhere within six years and one day to 12 years of *prision mayor.*

APPEARANCES OF COUNSEL

Macamay Macamay Macamay & Macamay Law Office for petitioners.

The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 24 July 2002 Decision[2] and 23 December 2002 Resolution[3] promulgated by the Court of Appeals in CA-G.R. CR No. 21278. The Court of Appeals affirmed with modification the 30 April 1997 Decision[4] of the Regional Trial Court of Ozamiz City, Branch 35, in Criminal Case Nos. RTC-1411 and RTC-1412 finding petitioners spouses Larry and Luz Cajigas guilty beyond reasonable doubt of two counts each of estafa under Article 315, paragraph 2(d) of the Revised Penal Code (RPC), as amended by Presidential Decree No. 818 (PD 818).

The Facts

Petitioners were charged with two counts each of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818. The Amended Informations in Criminal Case Nos. RTC-1411 and RTC-1412 read as follows:

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

[2] *Rollo*, pp. 8-26. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Conchita Carpio Morales (now a member of this Court) and Martin S. Villarama, Jr., concurring.

[3] *Id.* at 28-29. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Delilah Vidallon-Magtolis and Martin S. Villarama, Jr., concurring.

[4] *Id.* at 120-126. Penned by Judge Ma. Nimfa Penaco-Sitaca.

Criminal Case No. RTC-1411 (Amended Information)

That on or about October 14, 1989, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused spouses, conspiring and confederating together and/or mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously defraud Daisy Fuentes by means of false and fraudulent representations constituting deceit, well knowing that they have no sufficient funds deposited in the bank, and such fact was not disclosed to private offended party, draw, issue and negotiate FEBTC Check No. P 9019, dated November 14, 1989, covering the amount of ₱5,407.76; FEBTC Check No. P 9311, dated November 20, 1989, covering the amount of ₱6,558.00; FEBTC Check No. P 9313, dated November 25, 1989, covering the amount of ₱10,000.00; UCPB Check No. H 82285, dated November 30, 1989, covering the amount of ₱9,079.45 and UCPB Check No. H 82289, dated December 20, 1989, covering the amount of ₱2,713.00, and by means of said false pretenses or assurances and other similar deceits by active participation of accused Larry Cajigas induced private offended party to exchange aforestated checks with assorted jewelries in the amount of ₱33,758.21 for which the same did give and deliver to the above-named accused who fully well know that their manifestations and representation made to private offended party were false and untrue and upon presentation of FEBTC Checks Nos. P 9019, P 9311, P 9313, UCPB Checks Nos. H 82285 and H 82289 to the bank for payment the same were dishonored and unpaid for reason that the account of accused was closed and despite notice and demands made to them by private offended party that the aforestated checks were dishonored, the same failed and refused to make good said checks to the damage and prejudice of Daisy Fuentes in the amount of ₱33,758.21.[5]

Criminal Case No. RTC-1412 (Amended Information)

That on or about September 2, 1989, in the city of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused spouses, conspiring and confederating together and/or mutually helping one another, with intent to gain, did then and there willfully, unlawfully and feloniously defraud Daisy Fuentes by means of false and fraudulent representations constituting deceit, well knowing that they have no sufficient funds deposited in the

[5] Records (Criminal Case No. RTC-1411), pp. 39-40.

bank, and such fact was not disclosed to private offended party, draw, issue and negotiate ABC Check No. PA 660524012 F, dated October 2, 1989, covering the amount of ₱30,000.00 and ABC Check No. PA 660524014 F, dated October 5, 1989, covering the amount of ₱25,000.00 and by means of said false pretenses or assurances and other similar deceits by active participation of accused Larry Cajigas induced private offended party to exchange aforestated checks with assorted jewelries in the amount of ₱55,000.00 for which the same did give and deliver to the above-named accused who fully well know that their manifestations and representations made to private offended party were false and untrue and upon presentation of ABC Check No. PA 660524012 F and ABC Check No. PA 660524014 F to the bank for payment the same was dishonored and unpaid for reason that the account of accused was closed and despite notice and demands made to them by private offended party that the aforestated checks were dishonored, the same failed and refused to make good said checks to the damage and prejudice of Daisy Fuentes in the amount of ₱55,000.00.[6]

On arraignment, petitioners pleaded not guilty. Thereafter, trial ensued.

Version of the Prosecution

Private complainant Daisy Fuentes (Daisy) testified that she is a businesswoman engaged in the selling of ready-to-wear clothes (RTW) and jewelries. On 2 September 1989, petitioners went to Daisy's house in Lam-an, Ozamiz City and bought jewelries from her totaling ₱55,000. Petitioners paid for the jewelries by issuing two postdated Allied Bank Checks dated 2 and 5 October 1989, respectively. Daisy alleged that petitioners assured her that the checks were sufficiently funded. These checks, however, were dishonored by the drawee bank for the reason "Account Closed."

On 14 October 1989, Daisy claimed that petitioners went again to her house and purchased jewelries worth ₱33,000. As payment for the jewelries, petitioners issued five postdated checks, two United Coconut Planters Bank (UCPB) checks

[6] Records (Criminal Case No. RTC-1412).

dated 30 November and 20 December 1989 and three Far East Bank and Trust Company (FEBTC) checks dated 14, 20, and 25 November 1989. Petitioners again assured Daisy that the checks were funded. However, the checks, except UCPB Check No. 82289 dated 20 December 1989 in the amount of ₱2,713.00, bounced for the reason "Account Closed." Daisy no longer presented UCPB Check No. 82289 for payment because she already knew that Luz's UCPB account had been closed when Daisy presented the other UCPB check. As early as 10 August 1989, Luz's UCPB account was already closed.[7]

Daisy further claimed that she went twice to the house of petitioners to demand payment. On her first visit, petitioners allegedly evaded Daisy and on the second time, Daisy discovered that petitioners were no longer residing there. Daisy searched for petitioners in Zamboanga and Cagayan de Oro City until the latter were located sometime in 1994 in Sucat, Parañaque, where they were finally arrested.

On rebuttal, Daisy explained the circumstances surrounding the issuance of the receipt allegedly replacing the bounced postdated checks involved in this case. Daisy stated that she had a transaction with Luz involving pawn papers and purchased whichever pawned items she liked.[8] Daisy explained that she signed the receipt with only the following written on it: "I received eleven (11) pieces of pawn papers from Luz Cajigas."[9] Daisy denied that she signed the receipt as replacement for all the checks issued by Luz.[10] Daisy also stated that Larry had previously transacted with her involving purchase orders of RTWs in Geegee Shopping Center.

The prosecution likewise presented Santiago Parojinog, a UCPB Senior Teller, who testified that Luz opened a current account with UCPB on 9 July 1989 and closed it on 10 August

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[7] Exhibit "I", Records (Criminal Case No. RTC-1411), p. 184.

[8] TSN, 17 February 1997, pp. 4, 7.

[9] *Id.* at 11.

[10] *Id.* at 15.

1989.[11] Emmanuelito M. Enao (Enao), a Current and Savings Account Bookkeeper of FEBTC in Ozamiz City, testified that Luz opened a current account with FEBTC in September 1989 and closed it on 16 November 1989, and he showed photocopies of a ledger containing Luz's account.[12] Alex Donor, a Current and Savings Accounts Bookkeeper of Allied Bank, testified that Luz opened a current account with Allied Bank which was closed before October 1989.[13]

Version of the Defense

Larry denied the charges against him. Larry testified that he knew Daisy and her husband, Atty. Fuentes, but he never went to Daisy's house. He also stated that he had not seen the checks issued by his wife and co-accused Luz; that he and his wife did not have any joint bank account; and that he did not make any assurance that the checks subject of the criminal cases were sufficiently funded. On cross-examination, Larry testified that he was not aware of the transactions between his wife, Luz, and Daisy.

Luz, on the other hand, testified that she had been transacting with Daisy from 1986 to 1989 involving jewelries and purchase orders.[14] Luz admitted issuing the checks subject of these cases.[15] As their usual practice, Luz would purchase items from Daisy payable in five months and Luz would issue postdated checks before getting the items. If the amount involved was small, Daisy would wait for it to accumulate, then Luz would issue a check.[16] Luz would then redeem the checks. However, in the present criminal cases, Daisy did not return the checks after several demands to do so. Luz denied going to Daisy's

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[11] TSN, 11 July 1995, p. 3.

[12] TSN, 14 July 1995, pp. 3, 5, 6.

[13] *Id.* at 14.

[14] TSN, 25 September 1996, p. 4.

[15] *Id.* at 32, 33.

[16] *Id.* at 34.

house but she claimed that she transacted in Daisy's beauty parlor. Luz stated that she owed ₱3,500 only as remaining balance to be paid by pawn tickets.[17] Luz further claimed that she issued a replacement receipt for all the checks she issued, including the checks subject of these cases.[18]

After the trial, the Regional Trial Court of Ozamiz City, Branch 35, found petitioners guilty as charged, thus:

> WHEREFORE, finding accused spouses Larry and Luz Cajigas guilty beyond reasonable doubt of estafa punishable under Art. 315, par. 2(d) of the Revised Penal Code, as amended by PD 818 without modifying circumstances, this Court renders judgment sentencing them to two indeterminate penalties of six (6) years and one (1) day of *prision mayor* to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* and to indemnify the complainant ₱55,000.00 in Crim Case No. 1412 and ₱33,758.21 in Crim. Case No. 1411. This Court, however, finds that the strict enforcement of the provisions of Art. 315 as amended by PD 818 results in the imposition of a clearly excessive penalty, taking into account the degree of malice and injury caused by the offense. It therefore, recommends to the Chief Executive, through the Secretary of Justice, that the penalties imposed herein be commuted. With costs.
>
> SO ORDERED.[19]

The Ruling of the Court of Appeals

The Court of Appeals affirmed the conviction of the petitioners for two counts each of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818.

Contrary to petitioners' view, the Court of Appeals held that there were no inconsistencies between Daisy's testimonies during the cross-examination and rebuttal. Daisy simply explained the purpose and the circumstances that led her to sign the replacement receipt. The appellate court also stated that the discrepancies between the statements in Daisy's affidavit and testimony did

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[17] TSN, 24 September 1996, pp. 13, 14.

[18] TSN, 24 September 1996, p. 15; TSN, 25 September 1996, p. 8.

[19] *Rollo*, p. 126.

not impair her credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate.

The appellate court also found that Daisy was justified in filing the criminal cases only after four years from the date of the commission of the crime because she still had to determine the whereabouts of petitioners.

On Larry's culpability, the Court of Appeals agreed with the trial court that although Larry did not sign and issue the checks, he was still liable as a co-conspirator because he had known Daisy for a longer time.

The Court of Appeals further ruled that petitioners' failure to timely object to the admission of the photocopies of the ledger presented by the prosecution witness, Enao, constitutes a waiver of the right to object. Besides, objection to the admission of evidence for being hearsay cannot be raised for the first time on appeal.

In increasing the penalty imposed on petitioners, the Court of Appeals cited the case of *People v. Flores*.[20] Thus, the Court of Appeals disposed of the case, as follows:

> WHEREFORE, premises considered, with the modification that they should be, as they hereby are, sentenced each to serve an indeterminate penalty of twelve (12) years of *prision mayor* as minimum to twenty one (21) years of *reclusion perpetua* as maximum, in Criminal Case No. RTC-1411, and twelve (12) years of *prision mayor* as minimum to twenty three (23) years of *reclusion perpetua* as maximum, in Criminal Case No. RTC-1412, the judgment rendered by the trial court against accused-appellants Luz Cajigas and Larry Cajigas is AFFIRMED in all other respects. No pronouncement as to costs.
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> SO ORDERED.[21]

Hence, this petition.

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[20] 426 Phil. 187 (2002).

[21] *Rollo*, pp. 25-26.

The Issue

The main issue in this case is whether petitioners are guilty beyond reasonable doubt of two counts of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818.

The Ruling of the Court

The petition is partly meritorious.

Luz is guilty of two counts of estafa under Article 315, 2(d) of the RPC

Paragraph 2(d), Article 315 of the RPC provides:

> ART. 315. *Swindling (estafa).* — any person who shall defraud another by any of the means mentioned hereinbelow x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> x x x x x x x x x
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

The elements of estafa under paragraph 2(d), Article 315 of the RPC are (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency of funds to cover the check; and (3) damage to the payee.[22]

In the present case, the prosecution sufficiently established Luz's guilt beyond reasonable doubt for two counts of estafa

[22] *Firaza v. People,* G.R. No. 154721, 22 March 2007, 518 SCRA 681, 688.

under Article 315, paragraph 2(d) of the RPC. Luz admits issuing the subject postdated checks as payment for the jewelries she purchased from Daisy. In their various transactions, Daisy always required the issuance of checks in exchange for the jewelries purchased by Luz.[23] Daisy testified thus:

Q: By the way, Mrs. Witness, how long have you been with this business of buying and selling jewelries?
A: Long time ago, sir.

Q: More or less, since when?
A: Since the year 1986.

Q: Up to the present?
A: Yes, sir.

Q: And therefore, in this business of jewelries of yours, when you transact to sell, there is always an involvement of checks as being payment? Is it not?
A: Yes, sir, when they bought or buy jewelries, they paid me by check, because I will not give jewelries if they have no check.

Q: And so, you are very familiar insofar of the use of checks being issued by your client, is it not?
A: Yes, sir.[24]

Since Daisy would not have parted with the jewelries had it not been for Luz's issuance of the subject postdated checks, the checks were clearly issued as inducement for the surrender by Daisy of the jewelries.[25] The issuance of the checks was simultaneous to the delivery of the jewelries. It was a customary practice between the parties that Luz had to issue checks as payment for the jewelries she purchased from Daisy. Daisy also testified that she accepted the checks as payment for the

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[23] See *Ilagan v. People*, G.R. No. 166873, 27 April 2007, 522 SCRA 699.

[24] TSN, 12 July 1995, pp. 4-5.

[25] *People v. Reyes*, G.R. Nos. 101127-31,18 November 1993, 228 SCRA 13.

jewelries precisely because Luz assured her that the checks were funded and would not bounce.[26] Relying on such assurance, Daisy even negotiated some of the checks to her jewelry suppliers.[27]

However, Luz claims that she replaced the checks with pawn tickets, as evidenced by the replacement receipt allegedly signed by Daisy.

Though admitting that she signed the replacement receipt, Daisy denies that it was intended to replace the subject checks. Daisy explains that the phrase "as replacement for all my checks" was merely inserted by Luz after she signed the document, which, Daisy insists, only serves as a receipt for the pawn tickets. Daisy claims that the pawn tickets did not replace the dishonored checks.

The Court finds that the replacement receipt merely evidences the fact of receipt by Daisy of the pawn tickets covering various items. Though there appears the following phrase "as replacement for all my checks," this particular phrase does not clearly and convincingly indicate that the pawn tickets replaced all the bounced postdated checks which Luz issued to Daisy. The total value and the number of checks supposedly intended to be replaced by the receipt were undetermined. The amount of the checks allegedly to be replaced was left blank. There were also no details (check numbers, dates, and drawee banks) of the checks specifically covered by the replacement receipt.

Moreover, according to Luz, she had a remaining balance of ₱3,500, which prompted her to give the pawn tickets to Daisy to settle this unpaid balance.[28] However, Luz also testified that the total market value of the items covered by the pawn tickets is roughly ₱300,000.[29] It is highly incredible that Luz would give Daisy the pawn tickets covering various valuable items

[26] TSN, 12 July 1995, pp. 8, 12.

[27] TSN, 12 July 1995, p. 9.

[28] TSN, 24 September 1996, pp. 14-15.

[29] TSN, 25 September 1996, p. 29.

totaling ₱300,000 when her supposed unpaid balance was only ₱3,500. Luz failed to explain why there was a disparity between her unpaid balance and the value of the pawn tickets. Also, Luz did not substantiate her claim that she only had ₱3,500 as unpaid balance.

On the other hand, the prosecution failed to prove beyond reasonable doubt Larry's guilt for the crime of estafa under Article 315, paragraph 2(d) of the RPC.

The Court of Appeals erred in sustaining the trial court's finding that Larry is guilty as a co-conspirator of Luz for the two counts of estafa. The trial court found Larry guilty of the crime charged based on the following circumstances: "It was he, and not his wife, who had a longer acquaintance with [Daisy]; it was he whom [Daisy allegedly] trusted more; he had credit transactions with [Daisy] as shown by Exhibit "Q"; and he, together with his family, fled from Ozamiz City, leaving no address."[30] Exhibit "Q" is a purchase order from Geegee Shopping Center issued by Daisy in favor of Larry, which the prosecution presented to rebut Larry's claim that he had no previous transaction with Daisy.

As a rule, conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime.[31] In the present case, the prosecution failed to discharge its burden of establishing conspiracy between Luz and Larry based on proof beyond reasonable doubt. There was no proof, unlike in *People v. Isleta*,[32] that Larry had knowledge that Luz, the issuer of the checks, had no funds in the bank. The following facts were not disputed: (1) it was Luz, not Larry, who usually purchased jewelries from Daisy; (2) it was Luz, not Larry, who issued and directly negotiated the checks as payment for the jewelries; and (3)

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[30] Records (Criminal Case No. RTC-1411), p. 205.

[31] *Sim, Jr. v. People*, G.R. No. 159280, 18 May 2004, 428 SCRA 459.

[32] 61 Phil. 332 (1935). Cited in *Ilagan v. People*, G.R. No. 166873, 27 April 2007, 522 SCRA 699.

the checks were all drawn against Luz's personal bank accounts.[33] The previous transaction between Larry and Daisy involving a purchase order with Geegee Shopping Center was absolutely separate and different from the transactions between Luz and Daisy, which mainly involved the sale of jewelries. Besides, whether Larry had previously transacted with Daisy does not convincingly prove conspiracy between Luz and Larry in defrauding Daisy. Likewise, the fact that Daisy knew Larry longer than Luz does not prove Larry's guilt for the crime charged.

There is also no evidence on record to show that Larry had any agreement or understanding with his wife and co-accused Luz to defraud Daisy.[34] In *Timbal v. Court of Appeals*,[35] which involved an estafa case against a husband on account of a check issued by his wife, the Court held that the accused's mere presence at the scene of a crime would not by itself establish conspiracy, absent any evidence that he, by an act or series of acts, participated in the commission of fraud to the damage of the complainant.[36]

The penalty imposable on Luz

Considering that Luz is guilty beyond reasonable doubt for the crime of estafa under Article 315, paragraph 2(d) of the RPC, as amended by PD 818, Luz is sentenced to suffer the penalty provided under PD 818, thus:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

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[33] See *Ramos-Andan v. People*, G.R. No. 136388, 14 March 2006, 484 SCRA 611.

[34] *People v. Dizon*, 390 Phil. 1176 (2000).

[35] 423 Phil. 617, 622 (2001).

[36] *Id.* See also *People v. Dizon*, *supra*.

1. The penalty of *reclusion temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua;*

In Criminal Case No. RTC-1411, the total value of the dishonored checks is ₱33,758.21 while in Criminal Case No. RTC-1412, the total value of the checks is ₱55,000. Considering that the total face value of the checks in both criminal cases exceeds ₱22,000, the penalty of *reclusion temporal* should be imposed in its maximum period, which is from 17 years, 4 months and 1 day to 20 years, adding one year for each additional ₱10,000.[37] Accordingly, in Criminal Case No. RTC-1411, one year is added to 20 years, for a total of 21 years of *reclusion perpetua*. In Criminal Case No. RTC-1412, three years are added to 20 years, for a total of 23 years of *reclusion perpetua*.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence can be anywhere within the range of the penalty next lower in degree to the penalty prescribed by the RPC for the crime.[38] The determination of the minimum term of the indeterminate sentence should be done without considering any modifying circumstance attendant to the commission of the crime and without reference to the periods into which it may be subdivided.[39] The penalty prescribed under Article 315, paragraph 2(d) of the RPC, as amended by PD 818, is *reclusion temporal.* The penalty next lower in degree

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[37] *People v. Dinglasan*, 437 Phil. 621 (2002).

[38] *Firaza v. People*, G.R. No. 154721, 22 March 2007, 518 SCRA 681. See *People v. Temporada*, G.R. No. 173473, 17 December 2008. See also *People v. Gabres*, G.R. Nos. 118950-54, 6 February 1997, 267 SCRA 581 and *People v. Saley*, 353 Phil. 897 (1998).

[39] *Firaza v. People*, *supra*.

is *prision mayor*. The minimum term of the indeterminate penalty should be anywhere within six years and one day to 12 years of *prision mayor*.[40]

WHEREFORE, we *PARTIALLY GRANT* the petition. We *SET ASIDE* the 24 July 2002 Decision and 23 December 2002 Resolution of the Court of Appeals in CA-G.R. CR No. 21278. We find petitioner Luz Cajigas *GUILTY* beyond reasonable doubt of two counts of estafa under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Presidential Decree No. 818. In Criminal Case No. RTC-1411, petitioner Luz Cajigas is sentenced to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to twenty-one years of *reclusion perpetua* as maximum. In Criminal Case No. RTC-1412, she is also sentenced to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to twenty-three years of *reclusion perpetua* as maximum. She is likewise ordered to pay the total amount of ₱88,758.21 corresponding to the value of the checks. We *ACQUIT* petitioner Larry Cajigas in both criminal cases based on reasonable doubt.

SO ORDERED.

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

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[40] *Id.*; *People v. Dinglasan, supra.*

* Designated member per Special Order No. 570.

EN BANC

[G.R. No. 168792. February 23, 2009]

ANTONIO B. GUNSI, SR., *petitioner, vs.* **THE HONORABLE COMMISSIONERS, COMMISSION ON ELECTIONS and DATU ISRAEL SINSUAT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; COURTS GENERALLY DECLINE JURISDICTION OVER A MOOT AND ACADEMIC CASE OR DISMISS IT ON GROUND OF MOOTNESS; EXCEPTIONS. — A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness. The rule, however, admits of exceptions. Thus, courts may choose to decide cases otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or *fourth*, the case is capable of repetition yet evasive of review.

2. POLITICAL LAW; ELECTION LAWS; REPUBLIC ACT NO. 8189 (THE VOTER'S REGISTRATION ACT OF 1996); REGISTRATION OF VOTERS; REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR. — Section 10 of Republic Act No. 8189, The Voter's Registration Act of 1996 x x x explicitly provides in pertinent part: SECTION 10. Registration of Voters. – A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. **To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter.** x x x The application

for registration **shall contain three (3) specimen signatures of the applicant, clear and legible rolled prints of his left and right thumbprints,** with four identification size copies of his latest photograph, attached thereto, to be taken at the expense of the Commission. In stark contrast are the prevailing circumstances of Gunsi's application for registration: 1. Only a photocopy of Gunsi's application for registration was submitted in evidence before Investigating Officer Bedol as the original thereof was purportedly lost. The photocopy of the document clearly shows that Gunsi failed to sign parts 2 and 3 thereof. The administering officer, Joel Ellano, likewise did not sign part 3 of said document. These parts refer to the oath which Gunsi should have taken to validate and swear to the veracity of the contents appearing in the application for registration. 2. Joel Ellano was not presented by Gunsi to corroborate his claim that his failure to sign the application was merely due to inadvertence. Surprisingly, Gunsi chose to present, as witness, Alice Lim, Acting Election Officer of South Upi, Maguindanao, who admitted that she received an unsigned letter furnishing her a copy of Gunsi's unsigned application for registration and that she did not bother requiring Gunsi to accomplish in full the application for registration in order to complete the List of Voters. Lim likewise admits to inserting Gunsi's name in the List of Voters based on the photocopy of an unsigned application for registration which she had previously seen. Hence, the listing of the Applicants for Registration and the Lists of Voters which are alphabetically arranged with Gunsi's name inserted thereat. 3. The testimonies of Noraida Enero, Rowena Unson and Abdullah Mato, Municipal Treasurer of Upi, members of the Election Registration Board of South Upi, Maguindanao, who all categorically stated that they did not encounter Gunsi's application for registration. Plainly, from the foregoing, the irregularities surrounding Gunsi's application for registration eloquently proclaim that he did not comply with the minimum requirements of RA No. 8189. This leads to only one conclusion: that Gunsi, not having demonstrated that he duly accomplished an application for registration, is not a registered voter. In short, the cancellation of Gunsi's COC by the COMELEC and his consequent disqualification from running as Mayor of South Upi, Maguindanao, was correct.

APPEARANCES OF COUNSEL

Platon Bayan Bayan Sy & Associates for petitioner.
The Solicitor General for public respondent.
John Rangal D. Nadua for private respondent.

D E C I S I O N

NACHURA, *J.*:

At bar is a petition for *certiorari* and prohibition under Rule 65[1] of the Rules of Court filed by petitioner Antonio B. Gunsi, Sr. (Gunsi) challenging the June 9, 2005 Resolution[2] of the Commission on Elections (COMELEC) *En Banc* which affirmed the October 11, 2004 Order[3] of the COMELEC Second Division.

The undisputed facts:

On January 9, 2004, private respondent Datu Israel Sinsuat (Sinsuat) filed a petition for the denial of due course to or cancellation of the certificate of candidacy (COC) of Gunsi in connection with the May 10, 2004 Synchronized National and Local Elections. Essentially, Sinsuat sought the disqualification of Gunsi for Mayor of South Upi, Maguindanao, alleging, that: (a) Gunsi was not a registered voter in the Municipality of South Upi, Maguindanao since he failed to sign his application for registration; (b) Gunsi's name was inserted illegally in the List of Applicants and Voters by Alice Lim, Acting Election Officer of South Upi, Maguindanao; and (c) the unsigned application for registration has no legal effect.

In refutation, Gunsi asseverated that his failure to sign his application for registration did not affect the validity of his registration since he possesses the qualifications of a voter set

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[1] The petition for *certiorari* and prohibition should have been filed under Rule 64 of the Rules of Court.

[2] *Rollo*, pp. 25-27.

[3] *Id.* at 50-52.

forth in Section 116 of the Omnibus Election Code as amended by Section 9 of Republic Act 8189.

On March 12, 2004, after hearing, the Investigating Officer and Provincial Election Supervisor III, Lintang H. Bedol, issued a resolution recommending Gunsi's disqualification to run for Municipal Mayor of South Upi, Maguindanao on the ground that he is not a registered voter of the municipality. Bedol pointed out that the signature in the application for registration is indispensable for its validity as it is an authentication and affirmation of the data appearing therein.

On August 2, 2004, the COMELEC Second Division issued a Resolution,[4] to wit:

> Although this case has become moot and academic since [Sinsuat] had been proclaimed as the winning candidate for the position of Mayor of South Upi, Maguindanao, in connection with the May 10, 2004 Synchronized National and Local Elections, [w]e, however, cannot allow the irregularities accompanying [Gunsi's] registration as raised by [Sinsuat] in his petition.
>
> The absence of [Gunsi's] signature in his application for registration casts serious doubt in its preparation and execution. It also renders the authenticity of the document questionable. In *Dalumpines v. Court of Appeals*, the Supreme Court ruled that "the absence of the signature of the contracting parties on the deed itself casts serious doubt in the preparation and execution of the deed."
>
> In addition, the inclusion of [Gunsi's] name in the Election Registration Board's Certified List of Applicants for Registration appears to have been added irregularly as the last name in a list of applicants arranged alphabetically.
>
> WHEREFORE, considering that [Gunsi] lost in the election for the position of Mayor of South Upi, Maguindanao and the fact that [Sinsuat] was duly proclaimed as Mayor of South Upi, Maguindanao on May 16, 2004, there being only one respondent, the instant petition is hereby **DISMISSED** for being moot and academic.

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[4] *Id.* at 45-49.

The Law Department, however, is directed to investigate the alleged irregularities herein mentioned for possible violation of election laws and to file the necessary information as the evidence warrants.

SO ORDERED.[5]

Subsequently, the same division of the COMELEC issued the herein assailed Order[6] clarifying the August 2, 2004 Resolution, thus:

In the light, however, of the pending pre-proclamation case docketed as SPC 04-247, filed by herein respondent, and the resolution issued by the [COMELEC] (First Division) annulling the proclamation of [Sinsuat], the possibility that a re-canvassing of the election returns of the Municipality of South Upi, Maguindanao is becoming more certain. Therefore, the ruling of the [COMELEC] (Second Division) dismissing the present petition for disqualification against herein respondent for being moot and academic becomes ineffective for the fact that, as argued by [Sinsuat] in his manifestation and clarification, his proclamation has been annulled by the [COMELEC] (First Division).

It is therefore, incumbent upon the [COMELEC] (Second Division) to issue a categorical ruling based on its finding as already articulated in the August 2, 2004 resolution.

xxx xxx xxx

In accordance with the above finding of the [COMELEC] (Second Division) it is [o]ur resolve that [petitioner] Antonio B. Gunsi, Sr. is disqualified to run as Mayor of South Upi, Maguindanao for being a non-registered resident of the same municipality.

WHEREFORE**,** premises considered, the [COMELEC] (Second Division), hereby, clarifies its August 2, 2004 resolution by declaring that, in accordance with the findings of the [COMELEC] (Second Division) in the promulgated resolution, [petitioner] Antonio B. Gunsi, Sr. is hereby **DISQUALIFIED** to run as Mayor of South Upi, Maguindanao for being a non-registered resident of the same.

SO ORDERED.[7]

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[5] *Id.* at 47-48.

[6] *Id.* at 50-52.

[7] *Id.* at 50-51.

Upon motion for reconsideration of Gunsi, the COMELEC *En Banc* issued the herein assailed Resolution:[8]

A perusal of the motion for reconsideration would show that the respondent failed to raise any new material issue. All matters raised in the Motion had already been traversed and resolved in the Recommendation of Provincial Election Supervisor Lintang Bedol dated March 12, 2004 and the Resolution of this Commission (Second Division) promulgated last August 2, 2004 as clarified by its Order dated October 11, 2004.

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION is hereby **DENIED**. The ORDER dated October 11, 2004 is **AFFIRMED**.

SO ORDERED.[9]

Hence, this petition imputing grave abuse of discretion to the COMELEC. Gunsi posits the following issues for our resolution:

WHETHER OR NOT THE HONORABLE COMMISSION HAS JURISDICTION OVER CASES INVOLVING THE RIGHT TO VOTE.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COMMISSION HAS JURISDICTION, WHETHER OR NOT THE HONORABLE SECOND DIVISION CAN CLARIFY ITS RESOLUTION AFTER SIXTY-NINE (69) DAYS FROM ITS PROMULGATION OR AFTER IT HAS BECOME FINAL AND EXECUTORY.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COMMISSION HAS JURISDICTION, WHETHER OR NOT THE HONORABLE COMMISSION COMMITTED SERIOUS ERRORS WHICH IS TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COMMISSION HAS JURISDICTION, WHETHER OR NOT THE HONORABLE COMMISSION IS CORRECT WHEN IT DISQUALIFIED [GUNSI] TO RUN AS MAYOR OF SOUTH UPI,

[8] *Supra* note 2.

[9] *Rollo,* p. 26.

MAGUINDANAO FOR BEING A NON REGISTERED RESIDENT OF THE SAME DUE TO HIS INADVERTENT FAILURE TO AFFIX HIS SIGNATURE OVER HIS HANDWRITTEN NAME IN THE SPACE PROVIDED THEREFOR IN HIS APPLICATION FOR REGISTRATION PERSONALLY FILLED UP, SWORN TO AN ADMINISTERING OFFICER AND DULY FILED WITH THE COMELEC.[10]

At the outset, we note that the term of office of Mayor of South Upi, Maguindanao, for which position Gunsi was disqualified by the COMELEC to run as a candidate had long expired on June 30, 2007 following the last elections held on May 14 of the same year. The expiration of term, therefore, is a supervening event which renders this case moot and academic.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[11]

The rule, however, admits of exceptions. Thus, courts may choose to decide cases otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or *fourth*, the case is capable of repetition yet evasive of review.[12] None of the foregoing exceptions calling for this Court to exercise jurisdiction obtains in this instance.

In any event, upon a perusal of the merits or lack thereof, the petition is clearly dismissible.

Gunsi insists that he possessed the qualifications to run for Mayor of South Upi, Maguindanao; specifically, he claims that he was a registered voter at the time he filed his COC. Gunsi

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

[11] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, May 3, 2006, 489 SCRA 160.

[12] *Id*.

is adamant that his mere failure to affix his signature to the application for registration, which he accomplished personally before Joel Ellano, COMELEC Administering Officer, did not necessarily invalidate his application for registration. Consequently, Gunsi maintains that he is a registered voter, especially considering that his name appears in the Registry List of Voters. In all, Gunsi avers that his COC should not have been cancelled; ultimately, he should not have been disqualified from running as Mayor of South Upi, Maguindanao.

We are not convinced. Gunsi's arguments are annihilated by Section 10 of Republic Act No. 8189,[13] The Voter's Registration Act of 1996, which explicitly provides in pertinent part:

> SECTION 10. Registration of Voters. — A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. **To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter.**
>
> xxx xxx xxx
>
> x x x The application for registration **shall contain three (3) specimen signatures of the applicant, clear and legible rolled prints of his left and right thumbprints,** with four identification size copies of his latest photograph, attached thereto, to be taken at the expense of the Commission.[14]

In stark contrast are the prevailing circumstances of Gunsi's application for registration:

1. Only a photocopy[15] of Gunsi's application for registration was submitted in evidence before Investigating Officer Bedol as the original thereof was purportedly lost. The photocopy of

[13] Entitled "AN ACT PROVIDING FOR A GENERAL REGISTRATION OF VOTERS, ADOPTING A SYSTEM OF CONTINUING REGISTRATION, PRESCRIBING THE PROCEDURES THEREOF AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR."

[14] Emphasis supplied.

[15] *Rollo*, p. 62.

the document clearly shows that Gunsi failed to sign parts 2 and 3 thereof. The administering officer, Joel Ellano, likewise did not sign part 3 of said document. These parts refer to the oath which Gunsi should have taken to validate and swear to the veracity of the contents appearing in the application for registration.

2. Joel Ellano was not presented by Gunsi to corroborate his claim that his failure to sign the application was merely due to inadvertence. Surprisingly, Gunsi chose to present, as witness, Alice Lim, Acting Election Officer of South Upi, Maguindanao, who admitted that she received an unsigned letter furnishing her a copy of Gunsi's unsigned application for registration and that she did not bother requiring Gunsi to accomplish in full the application for registration in order to complete the List of Voters.[16] Lim likewise admits to inserting Gunsi's name in the List of Voters based on the photocopy of an unsigned application for registration which she had previously seen. Hence, the listing of the Applicants for Registration and the Lists of Voters which are alphabetically arranged with Gunsi's name inserted thereat.[17]

3. The testimonies of Noraida Enero, Rowena Unson and Abdullah Mato, Municipal Treasurer of Upi, members of the Election Registration Board of South Upi, Maguindanao, who all categorically stated that they did not encounter Gunsi's application for registration.[18]

Plainly, from the foregoing, the irregularities surrounding Gunsi's application for registration eloquently proclaim that he did not comply with the minimum requirements of RA No. 8189. This leads to only one conclusion: that Gunsi, not having demonstrated that he duly accomplished an application for registration, is not a registered voter. In short, the cancellation of Gunsi's COC by the COMELEC and his consequent disqualification from running as Mayor of South Upi, Maguindanao, was correct.

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[16] *Id.* at 54.

[17] *Id.* at 53-54.

[18] *Id.* at 55-57.

WHEREFORE, premises considered, the petition is hereby *DISMISSED*. The COMELEC Order and Resolution dated October 11, 2004 and June 9, 2005 are *AFFIRMED*.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago, Tinga, and *Velasco, Jr., JJ.,* on official leave.

EN BANC

[G.R. No. 174484. February 23, 2009]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELIX ORTOA *y* OBIA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN DETERMINING THE INNOCENCE OR GUILT OF THE ACCUSED IN RAPE CASES. — To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while 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.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY ACCORDED GREAT

WEIGHT AND RESPECT. — The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. 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.

3. **ID.; ID.; ID.; RAPE VICTIMS REACT DIFFERENTLY TO A SEXUAL ASSAULT. —** The settled rule is that not all rape victims can be expected to act conformably to the usual expectations of everyone else; and that different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is well-settled that different people react differently to a given situation or type of situation. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. However, any of these conducts does not impair the credibility of a rape victim.

4. **ID.; ID.; ID.; NOT IMPAIRED BY THE LONG SILENCE AND DELAY IN REPORTING THE CRIME OF RAPE. —** [L]ong silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation. This principle applies with greater force where, as in this case, the victims were of tender age at the time of the rape incidents and were therefore susceptible to intimidation and threats of physical harm, especially from a close relative.

5. **CRIMINAL LAW; RAPE; TO BE CONSUMMATED, FULL PENETRATION IS NOT NECESSARY.** — [L]ack of lacerated wounds does not negate sexual intercourse. A freshly broken

hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape. Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In any case, for rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the *labia.* It suffices that there is proof of the entrance of the male organ into the *labia* of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.

6. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS. — [T]he elements of the crime [of acts of lasciviousness] as defined and penalized under Article 336 of the Revised Penal Code are as follows: (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; and (3) That the offended party is another person of either sex.

7. ID.; ID.; THE LONE TESTIMONY OF THE OFFENDED PARTY, IF CREDIBLE, IS SUFFICIENT TO ESTABLISH THE GUILT OF THE ACCUSED. — It is settled that in cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Such are the testimonies of victims who are young, immature, and have no motive to falsely testify against the accused, as in the instant case.

8. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER CATEGORICAL AND CONSISTENT POSITIVE IDENTIFICATION. — Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial.

9. CRIMINAL LAW; RAPE; PENALTY; CASE AT BAR. — As to the penalty imposed in Criminal Case No. MC01-386-FC-H, the prevailing law at the time the crime was committed in 1994 was still Article 335 of the Revised Penal Code, paragraph 6(1) of

which provides as follows: x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. x x x On October 22, 1997, Republic Act (R.A.) No. 8353, otherwise known as the Anti-Rape Law of 1997, took effect; it reclassified rape as a crime against persons and amended the provisions of the Revised Penal Code on rape. This law governs Criminal Case No. MC01-387-FC-H, because the rape in this case was committed in October 2000. Accordingly, paragraph 6(1) of Article 266-B of the Revised Penal Code, as amended, provides: x x x The death penalty shall 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: x x x Thus, appellant was correctly sentenced to death, as the special qualifying circumstances of minority and relationship were properly alleged in the information and proved during trial by the testimonies of the complainants, their mother and the appellant himself. They were also supported by copies of the birth certificates of complainants. However, in view of the enactment of R.A. No. 9346 on June 24, 2006, the death penalty can no longer be imposed. Appellant must, thus, be sentenced to suffer the penalty of *reclusion perpetua* in each case, without eligibility 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.*:

Before the Court on automatic review is the Decision[1] of the Court of Appeals (CA) dated May 26, 2006 in *CA-G.R. CR-H.C. No. 01939* which affirmed, with modification, the decision of the Regional Trial Court (RTC) of Mandaluyong City, Branch 212, in Criminal Case Nos. MC01-386-FC-H, MC01-387-FC-H and MC01-388-FC, finding appellant Felix Ortoa[2] *y* Obia guilty beyond reasonable doubt of two counts of Rape and one count of Acts of Lasciviousness and sentencing him to suffer the penalties of Death and *Reclusion Temporal,* Medium, respectively.

The facts of the case are as follows:

AAA[3] is the eldest while BBB is the second among eight children of common-law spouses Felix Ortoa (appellant) and CCC.

In 1991, when AAA was only three years old, appellant started sexually molesting her each time her mother was at work. Appellant undressed her and ordered her to lie down on the wooden bed. He then inserted his finger into her vagina causing her to cry, as she felt pain. AAA did not narrate any of these incidents to anyone, as she thought that she and appellant were just playing games.[4]

In 1994, when AAA reached the age of six, appellant started having sexual intercourse with her. Whenever CCC was at work, he would put AAA's siblings to sleep. Once AAA's

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[1] Penned by Justice Vicente S.E. Veloso with the concurrence of Justices Amelita G. Tolentino and Fernanda Lampas Peralta; CA *rollo*, p. 193.

[2] Referred to as "Ortua" in some parts of the records.

[3] Consistent with Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), the real names of the rape victims in this case are withheld and, instead, fictitious initials are used to represent them. Also, the personal circumstances of the victims or any other information tending to establish or compromise their identity, as well as those of their immediate family or household members, are not disclosed in this decision; *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN, April 29, 2002, pp. 5-8.

siblings are asleep, appellant would close the door and windows. He would undress AAA, insert his penis into her vagina and make push and pull movements. Appellant would only stop after he ejected a sticky white substance from his organ. AAA cried each time she was violated, but she never attempted to report these incidents to anyone, because she did not know that what her father was doing to her was a crime. Appellant repeatedly had carnal knowledge of AAA, and it was only when the latter reached the age of 12 that she realized that she was being sexually abused.[5]

In December 1999, AAA experienced profuse bleeding (*dinugo*) which lasted for several days. It was during this incident that she confessed to her mother that she was being sexually abused by appellant.[6] CCC confronted appellant, but did not file a complaint against him.[7]

The last time that appellant had sexual intercourse with AAA was on April 3, 2001. After appellant consummated his carnal desires, he lay beside AAA on their wooden bed. It was there that CCC saw them. CCC again confronted appellant. After a brief exchange of words, appellant left. AAA again told her mother that she was sexually abused by appellant.[8]

As to BBB, appellant started sexually abusing her when she was eight years old. Everytime she and her father were left inside their house, the latter would close the door, undress her, partially insert his penis into her vagina and slide it into her labia.[9]

Sometime in October 2000, she was summoned by appellant and was told to close the windows and the door of their house. Thereafter, appellant told her to lie down on their wooden bed. At that time, her mother was at work while her older sister,

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[5] *Id.* at 9-12.

[6] TSN, April 29, 2002, pp. 14-16

[7] TSN, August 15, 2002, p. 32.

[8] TSN, April 29, 2002, pp. 16-26.

[9] TSN, May 27, 2002, pp. 10-11.

AAA, went to school. BBB's younger siblings were at home with her and appellant. When BBB was already lying on the bed, appellant directed her to remove her underwear. Appellant then went on top of her, placed his left knee on her right thigh, pulled his short pants and briefs down to his knees and inserted his erect penis into her vagina. BBB felt pain and cried quietly. Appellant did push and pull movements. After emitting a sticky white substance from his penis, appellant lay down beside BBB and told her not to tell anybody about what he did, otherwise he would hit her. BBB then stood up and started to prepare her things, as she was about to go to school.[10]

On April 3, 2001, when BBB heard her sister, AAA, tell their mother about her sexual abuse in the hands of their father, BBB also confessed what their father did to her.[11] CCC immediately went to the employer of appellant and sought advice and help from him. Appellant's employer accompanied her to the Mandaluyong City Police Station. However, the person they wanted to talk to was not there at that time. Appellant's employer then advised CCC to go home and instructed her to return the following day.[12]

On April 4, 2001, BBB and CCC returned to the office of appellant's employer. The latter again accompanied them to the police station where they reported the sexual abuses committed by appellant against AAA and BBB.[13] Upon instruction of the police, BBB and CCC, together with AAA, returned to the station the following morning. AAA and BBB were subjected to physical examination. Thereafter, they returned to the police station where their sworn statements were taken. A social worker then took custody of AAA and BBB.[14]

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[10] *Id.* at 4-10.

[11] TSN, May 27, 2002, p. 12.

[12] TSN, August 15, 2002, pp. 14-16.

[13] *Id.* at 16-18.

[14] *Id.* at 19-24.

Subsequently, three separate Informations[15] which were all dated July 2, 2001 were filed against appellant. The accusatory portions read:

In Criminal Case No. MC01-386-FC-H:

That sometime in 1994, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge, with her [sic] own daughter one [AAA], a minor (6 years old), against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.

CONTRARY TO LAW.[16]

In Criminal Case No. MC01-387-FC-H:

That sometime in October 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge, with her [sic] own daughter one [BBB], a minor (9 years old), against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.

CONTRARY TO LAW.[17]

In Criminal Case No. MC01-388-FC:

That sometime in 1991, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named

[15] Another criminal information for rape was filed against appellant involving the incident that happened between him and AAA on April 3, 2001. The case was docketed as Criminal Case No. MC01-328-FC-H and was tried by the RTC of Mandaluyong City, Branch 208. Appellant was found guilty as charged and sentenced to Death but his sentence was later reduced by the CA to *reclusion perpetua* pursuant to Republic Act No. 9346. The CA Decision was modified by this Court in its Decision in G.R. No. 176266, dated August 8, 2007, by increasing the award of moral damages and reducing the grant of exemplary damages.

[16] Records, p. 1.

[17] Records, p. 19.

accused, with lewd designs did, then and there wilfully, unlawfully and feloniously commit acts of lasciviousness with her [sic] own daughter one [AAA], a minor, three (3) years old girl, by then and there inserting his finger to the vagina of the victim, against the latter's will and consent. Thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.

CONTRARY TO LAW.[18]

On arraignment, appellant pleaded not guilty to all of the charges.[19] Pre-trial conference followed. Thereafter, trial ensued.

On June 10, 2004, the RTC rendered its Decision,[20] the dispositive portion of which is as follows:

WHEREFORE, finding accused **FELIX ORTOA *y* OBIA GUILTY BEYOND REASONABLE DOUBT** for two counts of RAPE and for ACTS OF LASCIVIOUSNESS, he is hereby sentenced to suffer the following penalty.

IN CRIMINAL CASE NO. MC01-386-FC-H:

The supreme penalty of DEATH; and to pay [AAA] ₱75,000.00 as indemnity; and ₱50,000.00 as moral damages.

IN CRIMINAL CASE NO. MC01-387-FC-H

The supreme penalty of DEATH; and to pay [BBB] ₱75,000.00 as indemnity; and ₱50,000.00 as moral damages.

IN CRIMINAL CASE NO. MC01-388-FC

The penalty of Indeterminate Sentence of *RECLUSION TEMPORAL* MEDIUM or imprisonment of sixteen (16) years, five (5) months and eleven (11) days, as minimum to eighteen (18) years, two (2) months and twenty (20) days, as maximum;

And to pay BBB [sic][21] ₱50,000.00 as moral damages.

The Branch Clerk of Court is hereby ordered to prepare the mittimus and to transmit the complete records of this case to the Honorable Supreme Court for automatic review.

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[18] *Id.* at 43.

[19] *Id.* at 37.

[20] *Id.* at 201.

[21] Should be "AAA".

SO ORDERED.[22]

Appellant filed a Notice of Appeal on June 22, 2004 from his conviction of the crime of Acts of Lasciviousness in Criminal Case No. MC01-388-FC.[23] With respect to Criminal Case Nos. MC01-386-FC-H and MC01-387-FC-H, sentencing appellant to suffer the penalty of death, the RTC directed that the entire records of the cases be forwarded to this Court for automatic review.[24]

In its Resolution dated November 8, 2005, the Court referred the cases to the CA for appropriate action and disposition[25] pursuant to the Court's pronouncement in *People v. Mateo*.[26]

After a review of the cases, the CA rendered its decision, the dispositive portion of which reads:

WHEREFORE, the Decision of the Regional Trial Court of Mandaluyong City, Branch 212, finding accused-appellant Felix Ortoa *y* Obia guilty of two (2) counts of rape in Criminal Cases Nos. MC01-386-FC-H and MC01-387-FC-H is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is hereby ordered to pay exemplary damages – ₱25,000.00 to [AAA] and ₱25,000.00 to [BBB].

Regarding Criminal Case No. MC01-388-FC, the judgment of conviction for acts of lasciviousness is **AFFIRMED** with **MODIFICATION**, in that the accused-appellant is hereby sentenced to an indeterminate imprisonment ranging from six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and to pay the victim, [AAA] ₱25,000.00 as exemplary damages.

Let the entire records of this case be elevated to the Supreme Court for its review, pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases) which took effect on October 14, 2004.

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[22] Records, pp. 246-247.

[23] *Id.* at 249.

[24] *Id.* at 250.

[25] CA *rollo*, p. 190.

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

SO ORDERED.[27]

The case was then elevated to this Court for review.

Appellant's Assignment of Errors in his Brief is as follows:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY IN CRIMINAL CASE NO. MC01-387-FC-H WHEN PHYSICAL EVIDENCE PROVES OTHERWISE.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN TOTALLY DISREGARDING THE VERSION OF THE DEFENSE.[28]

The Court finds appellant's contentions untenable.

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while 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.[29]

Accordingly, in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony.[30] The settled rule is that the trial court's conclusions on the credibility of

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[27] CA *rollo*, pp. 220-221.

[28] *Id.* at 90.

[29] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 373.

[30] *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 787.

witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[31]

Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.[32] 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.[33] No such facts or circumstances exist in the present case.

Both the RTC and the CA are in agreement that AAA and BBB were categorical, straightforward, spontaneous, convincing, clear and candid in their testimonies that their father raped them. The same is true with respect to AAA's testimony that appellant committed acts of lasciviousness against her.

Appellant contends that the probable reason why private complainants and their mother filed criminal complaints is that they bore grudges against him for bringing problems to their family, particularly because of his having sexual relations with a woman other than his wife and for inflicting harm on AAA as a means of imposing discipline upon her because appellant caught her having sexual intercourse with her boyfriend.[34]

Appellant's claim deserves scant consideration. The Court finds it incredible for private complainants and their mother to trump up charges of rape and acts of lasciviousness against appellant because they wanted to exact revenge on him for

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[31] *Id.*

[32] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 768.

[33] *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296, 303.

[34] TSN, March 17, 2003, pp. 10-11.

the simple reason that he caused them problems. No woman would cry rape, allow an examination of her private parts, subject herself to humiliation, go through the rigors of public trial and taint her good name if her claim were not true.[35] Both AAA and BBB testified that they were aware that if their father would be found guilty as charged, he would suffer the penalty of death.[36] It takes a certain amount of psychological depravity for a young woman to concoct a story which could cause the loss of life of her own father and drag the rest of the family, including herself, to a lifetime of shame.[37]

Moreover, CCC would not allow her children to be exposed to a public trial, if the charges she made were not true. No mother would consider subjecting her own daughters to the shame, humiliation, disgrace, exposure, anxiety and tribulation attendant to a public trial for rape — which in all likelihood would result in the incarceration, if not death, of the father of her children for the rest of his life — if she were not motivated solely by the desire to have the person responsible for the defloration of her daughters apprehended and punished.[38] In fact, when asked how she felt upon learning that it was her husband who molested their daughters, CCC testified that she was furious.[39]

The Court is not persuaded by appellant's arguments that it is inconceivable for AAA to only report her rape and molestation to the authorities when she was already 13 years old, considering that she claimed that appellant started to sexually assault her when she was only 3 years old; that her natural reaction would be to tell her ordeal to her mother right away; that if complainants

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[35] *People v. Marcelo*, G.R. Nos. 126538-39, November 20, 2001, 369 SCRA 661, 672.

[36] TSN, April 29, 2002, p. 60; TSN, May 27, 2002, p. 18.

[37] *People v. Brondial*, G.R. No. 135517, October 18, 2000, 343 SCRA 600, 620.

[38] *People v. Alimon*, G.R. No. 87758, June 28, 1996, 257 SCRA 658, 670; *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 753.

[39] TSN, August 15, 2002, pp. 33-34.

really wanted to protect themselves, it was uncharacteristic for them not to tell their molestation to anyone as there was no threat to their lives, nor was there anything that would have prevented them from divulging their sufferings.

The settled rule is that not all rape victims can be expected to act conformably to the usual expectations of everyone else; and that different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode.[40] It is well-settled that different people react differently to a given situation or type of situation.[41] There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault.[42] The workings of the human mind placed under emotional stress are unpredictable, and people react differently some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion.[43] However, any of these conducts does not impair the credibility of a rape victim.

Furthermore, the Court has held in a line of cases that long silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation.[44] This principle applies with greater force where, as in this case, the victims were of tender age at the time of the rape incidents and were therefore susceptible to intimidation and threats of physical harm, especially from a close relative.[45] Contrary to appellant's

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[40] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.

[41] *Id*.

[42] *Id*.

[43] *Id*.

[44] *People v. Mangubat*, G.R. No. 172068, August 7, 2007, 529 SCRA 377, 392-393; *People v. Senieres*, G.R. No. 172226, March 23, 2007, 519 SCRA 13; *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 346; *People v. Ballester*, G.R. No. 152279, January 20, 2004, 420 SCRA 379, 384.

[45] *Id*.

claim that the victims were not threatened, AAA testified that everytime appellant raped her and she tried to shout, the former spanked her;[46] that she developed a feeling of fear every time her father was around.[47] Furthermore, AAA's failure to immediately inform anyone of her ordeal in the hands of her father was understandable, considering that at her very tender age she had as yet no idea that what appellant was doing to her was a crime. As testified to by AAA, it was only when she was 12 years old that she came to understand that she was being sexually abused by her father.[48] BBB testified, on the other hand, that appellant told her not to tell anybody about what he did to her; otherwise, he would hit her.[49]

With respect to CCC, she sufficiently explained that her delay in reporting the sexual abuses committed by appellant against their two daughters was due to the fact that she and their children were dependent upon appellant for support, and that she could not raise their children on her own; that she finally mustered enough courage to file a complaint against appellant, because she felt that she had no other choice and she also wanted said abuses to stop.[50]

The Court is not persuaded by appellant's contention that BBB was never sexually abused because the medico-legal findings showed that she was still in a virgin state when she was examined.

The medico-legal expert who examined BBB testified that it was possible for a male organ to penetrate the *labia minora* and leave the hymen still intact.[51] Moreover, the Court has ruled in a number of cases that the lack of lacerated wounds

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[46] TSN, April 29, 2002, p. 49.

[47] *Id.* at 48.

[48] TSN, April 29, 2002, p. 55.

[49] TSN, May 27, 2002, p. 9.

[50] TSN, August 15, 2002, pp. 32-33.

[51] TSN, September 12, 2002, p. 44.

does not negate sexual intercourse.[52] A freshly broken hymen is not an essential element of rape.[53] Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape.[54] Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus.[55] In any case, for rape to be consummated, full penetration is not necessary.[56] Penile invasion necessarily entails contact with the *labia.*[57] It suffices that there is proof of the entrance of the male organ into the *labia* of the *pudendum* of the female organ.[58] Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.[59]

In the present case, BBB categorically testified that appellant initially slid his penis into her labia but later on directly inserted his penis into her vagina, causing her to feel pain.

It is wrong for appellant to contend that BBB simply claimed that she was raped "without even a modicum of details how the act was done." BBB's testimony specified the acts committed by appellant when he violated her in October 2000, to wit:

Q: Could you tell us how did this rape incident happen on [sic] October 2000?
A: He called me and he told me to close the door and the windows.

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[52] *People v. Operario*, G.R. No. 146590, July 17, 2003, 406 SCRA 564, 572.

[53] *Id*.

[54] *Id*.

[55] *People v. Basite*, G.R. No. 150382, October 2, 2003, 412 SCRA 558, 565.

[56] *People v. Operario*, *supra* note 52.

[57] *People v. Operario*, *supra* note 52.

[58] *Id*.

[59] *Id*.

Q: You are referring to whom?
A: My father.

Q: After telling you to close the windows and the door, what happened next [BBB]?
A: He called me and he made me lie down on the wooden bed.

Q: Where did this happen [BBB]?
A: In our house.

Q: Would you say that this happen [sic] in your room?
A: No sir, in our house.

Q: How many rooms are there in your house?
A: Only one (1) sir.

Q: Who were present when your father called you and made you lie on the bed after closing the windows and the door?
A: My siblings.

Q: Could you tell us the names of your siblings?
A: Christian, Kristel, J.R. and myself.

Q: What happened to your mother, where is [sic] she at that time?
A: She's at work.

Q: What about your older sister, where was she at that time?
A: She went to school.

Q: While you were lying on the wooden bed, could you tell us what happened?
A: He made me remove my panty at "*tinandayan po niya ako*".

Q: What were you wearing at that time?
A: I was wearing a duster.

Q: Could you please (s)how that [sic] "*tinandayan*" was?
A: While I was lying on the wooden bed after removing my panty, my Papa Felix Ortoa went to [sic] top of me "*tinandayan po nya ako*" (at this juncture, the witness

demonstrated how "*tinandayan*" is and at that point, the witness demonstrated that the left knee of her father was on top of her right thigh while the left knee was atop the wooden bed and it was at the said instance that the father inserted his penis to her vagina, at this juncture, using the Court herself as reference reacted the part of [BBB] and [BBB] herself was the one who acted as Felix Ortoa.

Court:

Any other fiscal?

Prosecutor Laron:

While your father was on top of you, what was he wearing at that time [AAA]?

Witness:

He simply pulled down his shorts and brief up [sic] to his knee and he inserted his penis into my vagina.

Q: Are you sure that his penis was inserted into your vagina?
A: Yes, sir.

Q: Why are you so sure that his penis was already inserted to your vagina?
A: It was painful.

Q: Because of that pain, what did you do Miss Witness?
A: I cried secretly.

Q: What happened next after your father's penis was in your vagina?
A: He finished, sir.

Prosecutor Laron:

What does it mean when you say he's finished?

Witness:

He was finished raping me. After he raped me, which means that he had already emitted a white sticky substance and he separated his body from my body.

Q: Where did you see that white sticky substance?
A: In my father's penis and in my vagina.

Q: Could you tell us [BBB] how long did it take from the time that he inserted his penis to your vagina up to the time he emitted this white sticky substance from his penis?
A: I cannot remember but it took a little while after the sticky substance was emitted from his penis.

Q: Could you tell us what else did your father do between that time that he inserted his penis to your vagina up to the time he emitted that white sticky substance from his penis?
A: None, sir.

Q: Was he not moving his body while on top of you?
A: He was doing the push and pull action (the witness was demonstrating how it was done by the father)

Q: Could you tell us what happened after you saw that white sticky substance from his penis and you also saw from your vagina?
A: My father removed his penis thereafter.[60]

With respect to the criminal offense of acts of lasciviousness, the elements of the crime as defined and penalized under Article 336 of the Revised Penal Code are as follows:

(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; and

(3) That the offended party is another person of either sex.[61]

In the instant case, AAA testified how she was molested by appellant when she was between the ages of three and six years, to wit:

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[60] TSN, May 27, 2002, pp. 5-8.

[61] *Cabila v. People*, G.R. No. 173491, November 23, 2007, 538 SCRA 695, 702.

FISCAL LARON:
Let us first go to your testimony that [sic] what he did to you [AAA]?

WITNESS:
When I was three (3) years old, each time my mother was not around and only us who were left behind my father would asked [sic] me to undress.

FISCAL LARON:
Did you comply?

WITNESS:
Yes.

FISCAL LARON:
After undressing what happen [sic] next?

WITNESS:
He inserted his finger into my vagina.

FISCAL LARON:
You are referring to who Madam witness?

WITNESS:
My father Felix Ortoa.

FISCAL LARON:
And could you still recall how many times he did it to you?

WITNESS:
Several times.

FISCAL LARON:
How do you feel when he inserted he's [sic] finger into your vagina.

WITNESS:
Painful.

FISCAL LARON:
What part of your body is painful?

WITNESS:
My vagina.

FISCAL LARON:
You also stated that he did this several times in each occasion could you still recall how long did it take your father to insert? [sic]

WITNESS:
I cannot recall how long he did it.

FISCAL LARON:
And once he's [sic] finger in your vagina, what is he doing then?

WITNESS:
He's just sitting.

COURT:
What about you, where were you?

WITNESS:
While I was lying on our wooden bed.

FISCAL LARON:
You stated that it was very painful, you would not cry, that result of that finger that have inserted into your vagina. [sic]

WITNESS:
I was crying.

FISCAL LARON:
Did you not shout?

COURT:
Your manifestation Fiscal, how old is your client?

FISCAL LARON:
Your honor, the victim is 14 years old.

COURT:
At the time that incident took place?

FISCAL LARON:
At the time the incident took place, that she was that started when she was three (3) years old. [sic]

COURT:
Now she's 14 years old, what is your manifestation?

FISCAL LARON:
May we request your honor that she be allowed to asked leading questions? [sic]

COURT:
Considering her minority and the sensitivity of the question asked and the gravity of the offense, we allowed he could asked leading questions. [sic]

FISCAL LARON:
Madam witness, did you not try or asked for help, while it is in pain? [sic]

WITNESS:
I did not shout, I was just crying.

FISCAL LARON:
When he was doing that, while his finger was inserted into your vagina are there other persons inside the room?

WITNESS:
There were no other persons, we were usually alone.

FISCAL LARON:
Where is your mother while doing this? [sic]

WITNESS:
My mother was at work.

FISCAL LARON:
Until when did your father do this thing, like inserting his finger into your vagina.

WITNESS:

> While I was three (3) years old, he inserting his finger, but when I was six (6) years old, he then started to insert his penis into my vagina. [sic][62]

It is settled that in cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[63] Such are the testimonies of victims who are young, immature, and have no motive to falsely testify against the accused, as in the instant case.[64]

Against the overwhelming evidence of the prosecution, appellant merely interposed the defense of denial. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial.[65] As earlier discussed, there is no showing of any improper motive on the part of the victims to testify falsely against the accused or to implicate him falsely in the commission of the crime; hence, the logical conclusion is that no such improper motive exists, and that their testimonies are worthy of full faith and credence. Accordingly, appellant's weak defense of denial cannot prosper.

As to the penalty imposed in Criminal Case No. MC01-386-FC-H, the prevailing law at the time the crime was committed in 1994 was still Article 335 of the Revised Penal Code, paragraph 6(1) of which provides as follows:

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity

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[62] TSN, April 29, 2002, pp. 5-9.

[63] *People v. Bon*, G.R. No. 149199, January 28, 2003, 396 SCRA 506, 515.

[64] *Id*.

[65] *People v. Quezada*, G.R. Nos. 135557-58, January 30, 2002, 375 SCRA 248, 259.

or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

xxx xxx xxx

On October 22, 1997, Republic Act (R.A.) No. 8353, otherwise known as the Anti-Rape Law of 1997, took effect; it reclassified rape as a crime against persons and amended the provisions of the Revised Penal Code on rape. This law governs Criminal Case No. MC01-387-FC-H, because the rape in this case was committed in October 2000. Accordingly, paragraph 6(1) of Article 266-B of the Revised Penal Code, as amended, provides:

xxx xxx xxx

The death penalty shall 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:

xxx xxx xxx

Thus, appellant was correctly sentenced to death, as the special qualifying circumstances of minority and relationship were properly alleged in the information and proved during trial by the testimonies of the complainants,[66] their mother[67] and the appellant himself.[68] They were also supported by copies of the birth certificates of complainants.[69]

However, in view of the enactment of R.A. No. 9346[70] on June 24, 2006, the death penalty can no longer be imposed.

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[66] TSN, April 29, 2002, pp. 1-4; TSN, May 27, 2002, pp. 2-3, 17-18.

[67] TSN, August 15, 2002, pp. 2-3.

[68] TSN, March 17, 2003, pp. 2-3.

[69] Exhibits "F" and "H", pp. 141 and 144, original records.

[70] "An Act Prohibiting the Imposition of Death Penalty in the Philippines"

Appellant must, thus, be sentenced to suffer the penalty of *reclusion perpetua* in each case, without eligibility for parole.[71]

The Court finds no error in the penalty imposed by the CA for the acts of lasciviousness committed by appellant against AAA. The CA correctly ruled that the applicable law at the time the crime was committed in 1991 was Article 336 of the Revised Penal Code and not R.A. No. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, which was approved only on June 17, 1992.

Exemplary damage was correctly awarded by the CA, given the presence of the qualifying aggravating circumstances of minority and relationship.[72] However, the award of exemplary damage with respect to AAA as victim of acts of lasciviousness is reduced to ₱20,000.00 in accordance with jurisprudence.[73]

In addition, AAA is also entitled to civil indemnity in the amount of ₱20,000.00 for acts of lasciviousness committed against her.[74]

The award of moral damages with respect to AAA and BBB as rape victims is increased to ₱75,000.00 in line with prevailing jurisprudence,[75] while the award of moral damages with respect

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[71] *People v. Ibañez*, G.R. No. 174656, May 11, 2007, 523 SCRA 136, 144-145.

[72] Article 2230, Civil Code; *People v. Villanueva*, G.R. No. 169643, April 13, 2007, 521 SCRA 236, 253; *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 756.

[73] *People v. Ceballos, Jr.*, G.R. No. 169642, September 14, 2007, 533 SCRA 493, 514; *People v. Alcoreza*, G.R. Nos. 135452-53, October 5, 2001, 366 SCRA 655, 672.

[74] *People v. Magbanua*, G.R. No. 176265, April 30, 2008; *People v. Palma*, G.R. Nos. 148869-74, December 11, 2003, 418 SCRA 365, 378.

[75] *People v. Ibañez*, *supra* note 71; *People v. Villanueva*, *supra* note 72.

to AAA as victim of acts of lasciviousness is reduced to ₱30,000.00, also in consonance with jurisprudence.[76]

WHEREFORE, the Decision dated May 26, 2006 of the Court of Appeals, finding appellant Felix Ortoa *y* Obia guilty beyond reasonable doubt of the crime of Qualified Rape is *AFFIRMED with FURTHER MODIFICATIONS* as follows:

In Criminal Case Nos. MC01-386-FC-H and MC01-387-FC-H, appellant is sentenced to suffer, in lieu of death, the penalty of *reclusion perpetua* without eligibility for parole; the award of moral damages to AAA and BBB as victims of rape is increased to ₱75,000.00 each.

In Criminal Case No. MC01-388-FC, appellant is ordered to pay AAA the amount of ₱20,000.00 as civil indemnity for the acts of lasciviousness committed against her; the award to AAA of moral damages is reduced to ₱30,000.00, and exemplary damages, to ₱20,000.00.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Carpio Morales, Chico-Nazario, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago, Tinga, and *Velasco, Jr., JJ.,* on official leave.

Nachura, J., no part.

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[76] *People v. Gabaldon*, G.R. No. 174472, June 19, 2007, SCRA; *Cabila v. People*, G.R. No. 173491, November 23, 2007, 538 SCRA 695, 703.

EN BANC

[A.M. No. 09-2-19-SC. February 24, 2009]

IN RE: UNDATED LETTER OF MR. LOUIS C. BIRAOGO, PETITIONER IN *BIRAOGO V. NOGRALES AND LIMKAICHONG,* G.R. No. 179120.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; RETIREMENT OF A JUDGE OR ANY JUDICIAL OFFICER FROM THE SERVICE; DOES NOT PRECLUDE THE FINDING OF ANY ADMINISTRATIVE LIABILITY TO WHICH HE IS ANSWERABLE; CASE AT BAR. — The subsequent retirement of a judge or any judicial officer from the service does not preclude the finding of any administrative liability to which he is answerable. A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite Justice Reyes's retirement. Even if the most severe of administrative sanctions may no longer be imposed, there are other penalties which may be imposed if one is later found guilty of the administrative offenses charged, including the **disqualification to hold any government office** and the **forfeiture of benefits.** The Court retains jurisdiction either to pronounce a respondent official innocent of the charges or declare him/her guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications. x x x **If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.** If innocent, a respondent official merits vindication of his/her name and integrity as he leaves the government which he/she served well and faithfully; if guilty, he/she deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

2. ID.; ID.; CONFIDENTIALITY AND INTEGRITY OF COURT RECORDS; CONFIDENTIAL INFORMATION ACQUIRED BY

JUSTICES AND JUDGES IN THEIR JUDICIAL CAPACITY SHALL NOT BE DISCLOSED FOR ANY OTHER PURPOSE NOT RELATED TO THEIR JUDICIAL DUTIES. — The Court cannot over-emphasize the importance of the task of preserving the confidentiality and integrity of court records. A number of rules and internal procedures are in place to ensure the observance of this task by court personnel. The New Code of Judicial Conduct provides that confidential information acquired by justices and judges in their judicial capacity shall not be used or disclosed for any other purpose not related to their judicial duties. The Code of Conduct for Court Personnel likewise devotes one whole canon on confidentiality, to wit: SECTION 1. Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary, whether such information came from authorized or unauthorized sources. **Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers. The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public.** SEC. 2. Confidential information available to specific individuals by reason of statute, court rule or administrative policy shall be disclosed only by persons authorized to do so. SEC. 3. Unless expressly authorized by the designated authority, court personnel shall not disclose confidential information given by litigants, witnesses or attorneys to justices, judges or any other person. SEC. 4. Former court personnel shall not disclose confidential information acquired by them during their employment in the Judiciary when disclosed by current court personnel of the same information would constitute a breach of confidentiality. **Any disclosure in violation of these provisions shall constitute indirect contempt of court**. Ineluctably, any release of a copy to the public, or to the parties, of an unpromulgated *ponencia* infringes on the confidential internal deliberations of the Court. It is settled that the internal deliberations of the Court are confidential. A frank exchange

of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise judicial power.

3. REMEDIAL LAW; EVIDENCE; DOCTRINE OF *RES IPSA LOQUITUR;* ELUCIDATED. — It is settled that **under the doctrine of *res ipsa loquitur*, the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law or misconduct.** x x x The Court in *Dizon*, clarified the doctrine of *rep ipsa loquitur*, viz: In these *res ipsa loquitur* resolutions, there was on the face of the assailed decisions, an inexplicable grave error bereft of any redeeming feature, a patent railroading of a case to bring about an unjust decision, or a manifestly deliberate intent to wreak an injustice against a hapless party. The facts themselves, previously proven or admitted, were of such a character as to give rise to a **strong inference** that evil intent was present. Such intent, in short, was clearly deducible from what was already of record. The *res ipsa loquitur* doctrine does not except or dispense with the necessity of proving the facts on which the inference of evil intent is based. It merely expresses the clearly sound and reasonable conclusion that when such facts are admitted or are already shown by the record, and no credible explanation that would negative the strong inference of evil intent is forthcoming, no further hearing to establish them to support a judgment as to the culpability of a respondent is necessary.

4. JUDICIAL ETHICS; JUDGES; THE RULE THAT THE ACTS OF A JUDGE IN HIS JUDICIAL CAPACITY ARE NOT SUBJECT TO DISCIPLINARY ACTION AND THAT HE CANNOT BE SUBJECTED TO CIVIL, CRIMINAL OR ADMINISTRATIVE LIABILITY FOR ANY OF HIS OFFICIAL ACTS AS LONG AS HE ACTS IN GOOD FAITH DOES NOT APPLY IN CASES OF LEAKAGE OR BREACH OF CONFIDENTIALITY. — As explained in *Louis Vuitton*, the familiar rule in administrative cases is that **the acts of a judge in his judicial capacity are not subject to disciplinary action, and that he cannot be subjected to civil, criminal or administrative liability for any of his official acts, no matter how erroneous**, **as long as he acts in good faith.** The rule adds that the proper remedy is via judicial recourse and not through an administrative action. It

must be pointed out that *Louis Vuitton* involves gross ignorance of the law and/or knowingly rendering an unjust judgment. In cases of leakage or breach of confidentiality, however, the familiar rule obviously does not apply. While the injured party is the Court itself, there is no judicial remedy available to undo the disclosure. Moreover, the premature disclosure does not spring from the four corners of the assailed decision or resolution nor can it gleaned on the face of the issuance itself. Indeed, one need not dwell on the substance of the decision since that in itself is inherently insufficient. In unearthing the misdeed, it becomes not only desirable but also necessary to trace the attendant circumstances, apparent pattern and critical factors surrounding the entire scenario. In *Macalintal v. Teh,* the Court pronounced: When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both instances, the judge's dismissal is in order. After all, faith in the administration of justice exists only if every party-litigant is assured that occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles. The same norm equally applies in the breach of the basic and essential rule of confidentiality that, as described in one case, "[a]ll conclusions and judgments of the Court, be they *en banc* or by Division, are arrived at only after deliberation [and c]ourt personnel are not in a position to know the voting in any case because all deliberations are held behind closed doors without any one of them being present.

5. ID.; ID.; GROSS MISCONDUCT; COMMITTED IN CASE AT BAR. — For leaking a confidential internal document of the *En Banc*, the committee likewise finds Justice Reyes administratively liable for **GROSS MISCONDUCT** for violating his lawyer's oath and the Code of Professional Responsibility, for which he may be disbarred or suspended per Section 27, Rule 138 of the Rules of Court. Canon 1 of the Code of Professional Responsibility requires a lawyer to uphold the Constitution, obey the laws of the land and promote respect for law and legal processes. It is likewise provided in Rule 1.01 and 1.02 of the said canon that a lawyer shall not engage

in unlawful, dishonest, immoral or deceitful conduct and that a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system. Here, the act of Justice Reyes not only violated the New Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics, it also infringed on the internal deliberations of the Court and impeded and degraded the administration of justice. The act is rendered all the more pernicious considering that it was committed by no less than a justice of the Supreme Court who was supposed to serve as example to the bench and bar.

6. LEGAL ETHICS; ATTORNEYS; DISBARMENT; PROHIBITION AGAINST THE INSTITUTION OF DISBARMENT PROCEEDINGS AGAINST AN IMPEACHABLE OFFICER; EXPLAINED. — That Justice Reyes was an impeachable officer when the investigation started is of no moment. The rule prohibiting the institution of disbarment proceedings against an impeachable officer who is required by the Constitution to be a member of the bar as a qualification in office applies only during his or her tenure and does not create immunity from liability for possibly criminal acts or for alleged violations of the Code of Judicial Conduct or other supposed violations. Once the said impeachable officer is no longer in office because of his removal, resignation, retirement or permanent disability, the Court may proceed against him or her and impose the corresponding sanctions for misconduct committed during his tenure, pursuant to the Court's power of administrative supervision over members of the bar. **Provided that the requirements of due process are met,** the Court may penalize retired members of the Judiciary for misconduct committed during their incumbency. Thus, in *Cañada v. Suerte*, this Court ordered the disbarment of a retired judge for misconduct committed during his incumbency as a judge.

7. ID.; ID.; ID.; IMPOSED ONLY IN CLEAR CASES OF MISCONDUCT THAT SERIOUSLY AFFECT THE STANDING AND CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND MEMBER OF THE BAR. — However, pernicious as Justice Reyes's infractions may have been, the committee finds the imposition of the supreme penalty of disbarment unwarranted. In the determination of the imposable disciplinary sanction against an erring lawyer, the Court takes

into account the preliminary purpose of disciplinary proceedings, which is to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable men in whom courts and clients may repose confidence. While the assessment of what sanction may be imposed is primarily addressed to the Court's sound discretion, the sanction should neither be arbitrary or despotic, nor motivated by personal animosity or prejudice. Rather, it should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar. Thus, the supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. Under the circumstances of this case, the committee finds the penalty of indefinite suspension from the practice of law sufficient and proper.

8. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT OFFICIALS AND EMPLOYEES; SHOULD AVOID ANY IMPRESSION OF IMPROPRIETY, MISDEED OR NEGLIGENCE IN THE PERFORMANCE OF OFFICIAL FUNCTIONS. — Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to carry. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the people's faith in the judiciary.

9. ID.; ID.; ID.; NEGLECT OF DUTY; PENALTY; CASE AT BAR. — Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, we find the penalty of fine on Atty. Evangelista and Del Rosario in the amount of ₱10,000 and ₱5,000, respectively, just and reasonable.

D E C I S I O N

***PER CURIAM*:**

Before this Court is the Report of the Investigating Committee created under the Resolution dated December 10, 2008, to investigate the unauthorized release of the unpromulgated *ponencia* of Justice Ruben T. Reyes in the consolidated cases of *Limkaichong v. COMELEC, Villando v. COMELEC, Biraogo v. Nograles and Limkaichong,* and *Paras v. Nograles*, docketed as G.R. Nos. 178831-32, 179240-41, 179120 and 179132-33, respectively, to determine who are responsible for the leakage of a confidential internal document of the *En Banc*.

The investigating committee, composed of Mr. Justice Leonardo A. Quisumbing as Chairperson and Mme. Justice Conchita Carpio Morales and Mr. Justice Renato C. Corona as Members, submitted the following report:

INVESTIGATING COMMITTEE CREATED UNDER THE
EN BANC RESOLUTION DATED DECEMBER 10, 2008

MEMORANDUM FOR:

HON. REYNATO S. PUNO, Chief Justice
HON. CONSUELO YNARES-SANTIAGO, Associate Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. MA. ALICIA AUSTRIA-MARTINEZ, Associate Justice
HON. DANTE O. TINGA, Associate Justice
HON. MINITA V. CHICO-NAZARIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice

RE: Report on the Investigation of the Unauthorized Release of the Unpromulgated Ponencia of Justice Ruben T. Reyes in the Consolidated Cases of Limkaichong v. COMELEC, Villando v. COMELEC, Biraogo v. Nograles and Limkaichong, and Paras v. Nograles, Docketed as G.R. Nos. 178831-32, 179240-41, 179120 and 179132-33, Respectively, to Determine Who are

Responsible for the Leakage of a Confidential Internal Internal Document of the En Banc

Respectfully submitted for the consideration of the Honorable Chief Justice and Associate Justices of the Supreme Court the following report on the results of the investigation of the committee created under the *En Banc* Resolution dated December 10, 2008.

ANTECEDENT FACTS

During its session on July 15, 2008, the Court *En Banc* continued its deliberations on the draft of Justice Ruben T. Reyes in the consolidated cases of *Limkaichong v. Comelec, Villando v. Comelec, Biraogo v. Nograles and Limkaichong,* and *Paras v. Nograles,* docketed as G.R. Nos. 178831-32, 179240-41, 179120 and 179132-33, respectively, (Limkaichong case) which was used by this Court as a working basis for its deliberations. Since no one raised any further objections to the draft, the *En Banc* approved it. It having been already printed on Gilbert paper, albeit a number of Justices manifested that they were concurring "in the result," Justice Reyes immediately circulated the *ponencia* during the same session.

After the session and during lunch, Chief Justice Reynato S. Puno noted that seven of the 13 Justices (excluding Justice Reyes) concurred "in the result" with the *ponencia* of Justice Reyes (hereafter Gilbert copy or Justice Reyes's *ponencia* or *ponencia* or unpromulgated *ponencia*). Justices Minita Chico-Nazario and Teresita Leonardo-de Castro then informed the Chief Justice that they too wanted to concur only "in the result." Since nine Justices, not counting the Chief Justice, would concur only "in the result," the Justices unanimously decided to withhold the promulgation of the Gilbert copy. It was noted that if a majority concurred only "in the result," the *ponencia* would have no doctrinal value. More importantly, any decision ousting a sitting member of the House of Representatives should spell out clearly the legal basis relied upon by the majority for such extreme measure. Justice Antonio T. Carpio then volunteered to write his *Reflections* on Justice Reyes's *ponencia* for discussion in the following week's *En Banc* session.

During its session on July 22, 2008, the *En Banc* deliberated on Justice Carpio's *Reflections* which had in the meantime been circulated to the members of the Court. As a result, the *En Banc* unanimously decided to push through and set the date for holding oral arguments on the Limkaichong case on August 26, 2008.

On the request of Justice Reyes, however, the Limkaichong case was included in the agenda of July 29, 2008 where it was listed as Item No. 66. The decision to hold oral arguments remained, however.

On December 9, 2008, Louis C. Biraogo, petitioner in *Biraogo v. Nograles and Limkaichong*, G.R. No. 179120, held a press conference at the Barrio Fiesta Restaurant in Maria Orosa Street, Ermita, Manila, and circulated to the media an undated letter signed by him, together with what appeared to be a xerox copy of the unpromulgated *ponencia*. In his letter, Biraogo insinuated that the Court, at the instance of the Chief Justice and with the implied consent of the other Justices, unlawfully and with improper motives withheld the promulgation of the *ponencia*.

Noting that the unauthorized release of a copy of the unpromulgated *ponencia* infringed on the confidential internal deliberations of the Court and constituted contempt of court, the Court, in a Resolution dated December 10, 2008, directed

1. The creation of an Investigating Committee, chaired by Senior Associate Justice Leonardo A. Quisumbing, with Associate Justice Consuelo Ynares-Santiago, Chairperson, Third Division and Associate Justice Antonio T. Carpio, Working Chairperson, First Division, as Members to investigate the unauthorized release of the unpromulgated *ponencia* of Justice Reyes to determine who are responsible for this leakage of a confidential internal document of the *En Banc*, and to recommend to the *En Banc* the appropriate actions thereon;

2. Mr. Louis C. Biraogo to **SHOW CAUSE,** within ten (10) days from receipt of this Resolution, why he should not be punished for contempt for writing the undated letter and circulating the same together with the unpromulgated *ponencia* of Justice Reyes.

As directed, the committee, composed of the aforementioned three senior Justices, conducted initial hearings on December 15 and 16, 2008.

In the meantime, in compliance with the Court's above-quoted Resolution dated December 10, 2008, Biraogo submitted to the Court his Compliance dated December 22, 2008 to which he attached the following annexes: (1) an undated photocopy of a 3-page printed letter addressed to "Dear Mr. Biraogo" which purportedly was sent

by a "Concerned Employee" as **Annex "A"**; (2) a June 12, 2008 note handwritten on a memo pad of Justice Reyes reading:

> Re: G.R. Nos. 178831-32, *etc*. [the comma and "*etc*." are handwritten]
> Dear Colleagues,
> I am circulating a revised draft of the *ponencia*.
>
> (Sgd.)
> RUBEN T. REYES,

together with a copy of Justice Reyes's Revised Draft *ponencia* for the June 17, 2008 agenda as **Annex "B"**; (3) a photocopy of the unpromulgated *ponencia* bearing the signatures of 14 Justices as **Annex "C"**; and (4) a photocopy of Justice Carpio's *Reflections* as **Annex "D"**.

Justice Ynares-Santiago later inhibited herself upon motion of Justice Ruben T. Reyes while Justice Carpio voluntarily inhibited himself. They were respectively replaced by Justice Renato C. Corona and Justice Conchita Carpio Morales, by authority of the Chief Justice based on seniority. Additional hearings were then held by the reconstituted committee on January 14, 16, 19, 20, 21 and 22, 2009.

The following witnesses/resource persons were heard:

1. **Armando A. Del Rosario**, *Court Stenographer III, Office of Associate Justice Ruben T. Reyes*
2. **Rodrigo E. Manabat, Jr.**, *PET Judicial Staff Officer II, Office of Associate Justice Ruben T. Reyes*
3. **Atty. Rosendo B. Evangelista**, *Judicial Staff Head, Office of Associate Justice Ruben T. Reyes*
4. **Associate Justice Minita V. Chico-Nazario**
5. **Associate Justice Antonio Eduardo B. Nachura**
6. **Associate Justice Teresita J. Leonardo-de Castro**
7. **ACA Jose Midas P. Marquez**, *Chief, Public Information Office*
8. **Ramon B. Gatdula**, *Executive Assistant II, Office of the Chief Justice*

9. **Atty. Ma. Luisa D. Villarama**, *Clerk of Court En Banc*
10. **Major Eduardo V. Escala**, *Chief Judicial Staff Officer, Security Division, Office of Administrative Services*
11. **Atty. Felipa B. Anama**, *Assistant Clerk of Court*
12. **Willie Desamero**, *Records Officer III, Office of the Clerk of Court*
13. **Glorivy Nysa Tolentino**, *Executive Assistant I, Office of Associate Justice Antonio Eduardo B. Nachura*
14. **Onofre C. Cuento**, *Process Server, Office of the Clerk of Court*
15. **Chester George P. Del Castillo**, *Utility Worker, Office of Associate Justice Ruben T. Reyes*
16. **Conrado B. Bayanin, Jr.,** *Messenger, Office of Associate Justice Ruben T. Reyes*
17. **Fermin L. Segotier**, *Judicial Staff Assistant II, Office of Associate Justice Antonio Eduardo B. Nachura*
18. **Retired Justice Ruben T. Reyes**

SUMMARIES OF TESTIMONIES

Below are the summaries of their testimonies:

1. ARMANDO A. DEL ROSARIO, Court Stenographer III, Office of Associate Justice Ruben T. Reyes, testified as follows:

He was in charge of circulating *ponencias* for the signatures of the Justices and of forwarding signed (by all the Associate Justices who are not on leave) *ponencia*s to the Office of the Chief Justice (OCJ).

On July 15, 2008, after the *En Banc* session, he received from Justice Reyes the original of the unpromulgated *ponencia* (Gilbert copy). Because he was busy at that time, he instructed his co-employee Rodrigo Manabat, Jr. to bring the Gilbert copy to the Office of Justice Nachura for signature and to wait for it. He instructed Manabat to rush to Justice Nachura's office because the latter was going out for lunch. After more than 30 minutes, Manabat returned with the Gilbert copy already

signed by Justice Nachura, who was the last to sign.[1] Del Rosario then transmitted the Gilbert copy together with the *rollo*, temporary *rollos*, and diskettes to the OCJ pursuant to standard operating procedures for the promulgation of decisions. The documents were received by Ramon Gatdula on the same day at around 3:00 p.m.

The following day, on July 16, 2008, at around 4:00 p.m., Justice Reyes instructed him to retrieve the Gilbert copy and the accompanying documents and diskettes as he was told that the promulgation of the *ponencia* had been placed on hold. He brought the Gilbert copy to Justice Reyes who told him to keep it. He then placed the Gilbert copy in a sealed envelope and placed it inside his unlocked drawer and wrote a note in his logbook when he retrieved the Gilbert copy that its promulgation was on hold and would be called again on July 29, 2008.[2]

The Gilbert copy was in his sole custody from July 16, 2008 until December 15, 2008 (when the investigating committee held its first hearing).[3] He never opened the envelope from the day he sealed it on July 16, 2008 until December 10, 2008, when Justice Reyes told everybody in their office that the Gilbert copy had been photocopied and leaked. He did not have any news of any leakage before then. And he also did not photocopy the Gilbert copy. The seal placed on the envelope was still intact when he opened it on December 10, 2008.[4] Although the lawyers in their office knew that he kept original copies of drafts in his unlocked drawer, he believed that nobody in his office was interested in photocopying the Gilbert copy. He was solely responsible for keeping the Gilbert copy. He did not know any of the parties to the case and none of them ever called him. And he did not know what Gatdula did after receiving the Gilbert copy.[5]

The Limkaichong case was called again on July 29, 2008 as Item No. 66. The Office of Justice Reyes received the *En Banc* agenda for the said date on July 25, 2008. Upon receipt of the

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[1] TSN, December 15, 2008, pp. 62-64, 66-68.

[2] TSN, December 15, 2008, pp. 28-33, 35-40, 97.

[3] TSN, December 15, 2008, p. 40.

[4] TSN, December 15, 2008, pp. 40-42, 93.

[5] TSN, December 15, 2008, pp. 37-38, 45, 47-48, 60.

said *En Banc* agenda and the new item number, their office prepared a new cover page and attached it to the Gilbert copy. The original cover page of the Gilbert copy for the agenda of July 15, 2008 showing the case as item number 52 was thrown away.[6]

On being recalled on January 20, 2009, Del Rosario further testified as follows:

On July 15, 2008 when the Justices were about to leave the *En Banc* session room after the adjournment of the session, he entered the room just like the rest of the aides.[7] He carried the folders of Justice Reyes, returned them to the office, and went back to, and waited for Justice Reyes until Justice Reyes finished lunch at the *En Banc* dining room.[8] The Gilbert copy was left with Justice Reyes.[9] Before 1:00 p.m., after the Justices had taken lunch,[10] Justice Reyes, who was then carrying an orange envelope, handed to him the Gilbert copy and instructed him to speed up the *ponencia*'s signing by Justice Nachura (who was not taking part in the oral arguments of a case scheduled at 1:30 p.m. that day) since the latter might be leaving.[11] He heard Justice Reyes say "*Ihabol mo ito… Ihabol na ipapirma kay Justice Nachura*" in the presence of Judicial Staff Head, Atty. Rosendo Evangelista, as the three of them were going down the stairs to their office from the session room.[12]

He was not the one who brought the *ponencia* to the Office of Justice Nachura because he gave the task to Manabat to whom he relayed the instruction.[13] There were already signatures on page 36 of the *ponencia* when he gave it to Manabat and

[6] TSN, December 15, 2008, pp. 53-55.

[7] TSN, January 20, 2009, pp. 6-7.

[8] TSN, January 20, 2009, pp. 10-11.

[9] TSN, January 20, 2009, pp. 11-12.

[10] TSN, January 20, 2009, pp. 15-16.

[11] TSN, January 20, 2009, pp. 8, 13-15, 19.

[12] TSN, January 20, 2009, pp. 8-9, 14.

[13] TSN, January 20, 2009, p. 15.

only the signature of Justice Nachura was missing.[14] He pointed this to Manabat saying, "*ito na lang ang walang pirma, dalhin mo doon.*" Manabat obliged him.[15]

After a few minutes, Manabat returned to their office bearing the Gilbert copy. He went to Atty. Evangelista, showing him that the *ponencia* had already been signed by Justice Nachura. Atty. Evangelista then instructed him to have the *ponencia* promulgated by delivering the same to the OCJ. He (Del Rosario) complied, personally handing the Gilbert copy with the *rollo*, records and diskettes to Ramon Gatdula of the OCJ at 3:30 p.m., also of July 15, 2008.[16] The *ponencia* stayed at the OCJ until the afternoon of the following day, July 16, 2008.[17]

He was not told that the promulgation of the *ponencia* was on hold until the afternoon of July 16, 2008, when Justice Reyes called him to his chambers and instructed him to retrieve the *ponencia*. He also stated that someone from the OCJ called their office and requested them to retrieve the *ponencia* because its promulgation was on hold.[18] At 4:00 p.m. that day, he retrieved the *ponencia etc*. from the OCJ[19] and gave the *ponencia* to Justice Reyes.[20]

He merely showed the *ponencia* to Justice Reyes who ordered him to keep it ("*tabi mo muna yan*").[21] He then placed a note "Hold, reset July 29" in his logbook after being informed by Atty. Evangelista of such date of resetting.[22] He reiterated that he placed the Gilbert copy in a brown envelope, sealed it with the officially issued blue and white seal provided by the Printing

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[14] TSN, January 20, 2009, pp. 17-19.

[15] TSN, January 20, 2009, p. 18.

[16] TSN, January 20, 2009, pp. 19-20, 64-65.

[17] TSN, January 20, 2009, pp. 20-22.

[18] TSN, January 20, 2009, pp. 21-28.

[19] TSN, January 20, 2009, p. 22.

[20] TSN, January 20, 2009, pp. 28-30.

[21] TSN, January 20, 2009, pp. 30-32, 68.

[22] TSN, January 20, 2009, pp. 31-32.

Office, and placed the envelope inside his unlocked drawer. The envelope was still sealed when he checked it on December 10, 2008.[23] He admitted that from the time he kept the Gilbert copy in his drawer until the Special *En Banc* meeting on December 10, 2008, he and no one else was in possession of the Gilbert copy. But he denied that he ever opened the envelope or photocopy the Gilbert copy. In fact, he did not mind it.[24] And nobody inquired about it since July 16, 2008 until December 10, 2008.[25] He likewise denied that he knew Congressman Paras or Biraogo or that the two ever called his office.[26]

When asked if he could produce the envelope into which he placed the Gilbert copy, he replied that Justice Reyes had taken it.[27] He also informed that what was placed on the face of the brown envelope was a computer print-out containing the title of the case, the names of the *ponente* and the other Justices, and the manner they voted.[28]

When he was asked by Justice Carpio Morales whether it was possible for him to recognize any tampering if, for instance, the envelope and the seal were replaced with a similar envelope and blue and white seal with a similar print-out information on the face of the envelope, he answered in the negative.[29] (At that point, Justice Carpio Morales remarked that Del Rosario, therefore, could not have been certain when he said that the envelope remained sealed from July 16, 2008 to December 10, 2008.)[30]

Nobody else knew where he put the Gilbert copy—in the same place as the other drafts. It was possible for someone to take the Gilbert copy from his drawer and photocopy it on a

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[23] TSN, January 20, 2009, pp. 36, 38, 47-48, 74.

[24] TSN, January 20, 2009, pp. 36, 38, 46-49.

[25] TSN, January 20, 2009, pp. 73-77.

[26] TSN, January 20, 2009, p. 33.

[27] TSN, January 20, 2009, pp. 41-44.

[28] TSN, January 20, 2009, pp. 42-44.

[29] TSN, January 20, 2009, pp. 44-48.

[30] TSN, January 20, 2009, p. 47.

weekend or after office hours.[31] Nobody told him to guard the Gilbert copy.[32]

Everybody in the office knew how to operate the xerox machine.[33] He drew a sketch of the layout of the desks inside the office of Justice Reyes, illustrating that his location was two desks away from the table of April Candelaria, a secretary in the office, and that the xerox machine was situated at the back of the long table of the receiving clerks.[34]

He stayed in the office as long as Justice Reyes was still there but he could not say for sure that nobody photocopied the Gilbert copy after office hours as he also went out of the office to smoke in the nearby garden area or repair to the toilet.[35]

He never reported to office on Saturdays and there was one time Justice Reyes went to office on a Saturday as he was also asked to report but he refused.[36] Justice Reyes sometimes dropped by the office on Sundays after attending services at the United Methodist Church along Kalaw Street, as told to him by the driver.[37]

He also circulated copies of the Revised Draft of the decision to the other Justices but he never received a copy of Justice Carpio's *Reflections*.[38] He did not offer an explanation why the Gilbert copy, which was in his possession, and the Revised Draft, were leaked.[39] No information was supplied by his officemates, friends or relatives to help explain the leakage.[40]

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[31] TSN, January 20, 2009, pp. 48-49.

[32] TSN, January 20, 2009, pp. 68-69.

[33] TSN, January 20, 2009, p. 51.

[34] TSN, January 20, 2009, pp. 52-54, 61-62.

[35] TSN, January 20, 2009, pp. 54-58.

[36] TSN, January 20, 2009, pp. 58-59.

[37] TSN, January 20, 2009, pp. 59-60.

[38] TSN, January 20, 2009, pp. 71-73.

[39] TSN, January 20, 2009, pp. 73-75.

[40] TSN, January 20, 2009, pp. 75-76.

Among his relatives working in the Court are his mother-in-law, Jasmin P. Mateo of the OCJ, sister of former Court Administrator Ernani Pano, and Mrs. Mateo's sibling, who works at the Hall of Justice Committee.[41]

He and the driver of Justice Reyes were given keys to the main door of the Office of Justice Reyes but he could not say that only the two of them held keys to the main door.[42] April Candelaria and Atty. Ferdinand Juan asked for and got duplicates of the key, but could not remember exactly when. Atty. Juan got a duplicate of the key because the lawyers sometimes went out for dinner and needed to go back to the office to retrieve their personal belongings.[43]

April Candelaria's secretarial functions included recording of the social activities of Justice Reyes and delivering door-to-door papers to his chambers.[44] Candelaria and the driver were in the staff of Justice Reyes since the latter's stint at the Court of Appeals, while Atty. Juan was employed ahead of him.[45]

Everybody in the office knew how to operate the xerox machine because all of them photocopied personal documents and were too ashamed to ask other officemates to do it for them.[46]

When news of the leakage came out, Justice Reyes called all his legal staff and him to a meeting. In a tone that was both angry and sad, Justice Reyes asked them if they knew anything about the leakage.[47] A meeting among Justice Reyes, Atty. Evangelista, Manabat and him took place on December 15, 2008, before the initial hearing by the investigating

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[41] TSN, January 20, 2009, pp. 76-77.

[42] TSN, January 20, 2009, pp. 77-79.

[43] TSN, January 20, 2009, pp. 80-82.

[44] TSN, January 20, 2009, pp. 83-84.

[45] TSN, January 20, 2009, pp. 84-85.

[46] TSN, January 20, 2009, pp. 85-86.

[47] TSN, January 20, 2009, pp. 86-88.

committee.[48] Justice Reyes also talked to him one-on-one and asked him if a copy of Justice Carpio's *Reflections* was attached to the Gilbert copy and other documents when they were sent to the OCJ. He replied that there was none and that he just kept the Gilbert copy in his drawer and had in fact forgotten all about it until Justice Reyes inquired about it in December.[49] He was not able to read Jarius Bondoc's column about the leakage of the Gilbert copy (which came out in the *Inquirer* in October 2008 about the Gilbert copy) nor had Justice Reyes confronted him about said column before December 2008.[50]

During the initial hearing in December 15, 2008, nobody talked to him or knew that he was testifying as he was even surprised that he was called to testify.[51] When confronted with the testimony of his officemate, Chester Del Castillo, who testified that Justice Reyes called only one meeting, he opined that Del Castillo might not have known about the meeting with the lawyers since Del Castillo was frequently absent.[52]

2. RODRIGO E. MANABAT, JR., PET Judicial Staff Employee II, Office of Associate Justice Ruben T. Reyes, testified as follows:

He was the personal aide of Justice Reyes. On July 15, 2008, he brought the Gilbert copy to the Office of Justice Nachura for signature upon the instruction of Del Rosario and Atty. Evangelista.[53] He gave the Gilbert copy to the receptionist and waited outside the said office. After ten minutes, the document was returned to him.[54] He then immediately gave it to Del Rosario. It took him not more than 15 minutes to return the document to Del Rosario.[55] He averred that he did not

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[48] TSN, January 20, 2009, p. 89.

[49] TSN, January 20, 2009, pp. 91-93.

[50] TSN, January 20, 2009, pp. 92-93.

[51] TSN, January 20, 2009, pp. 94-95.

[52] TSN, January 20, 2009, pp. 90-91.

[53] TSN, December 15, 2008, pp. 73-76.

[54] TSN, December 15, 2008, pp. 78-79.

[55] TSN, December 15, 2008, pp. 80-81.

photocopy the Gilbert copy nor did he notice if anybody from the Office of Justice Nachura photocopied it.[56] He also did not know if Del Rosario placed the document in a sealed envelope or photocopied it.[57] After returning the Gilbert copy to Del Rosario, he went back to Justice Reyes who asked him if Justice Nachura had already signed the *ponencia*. He answered yes and told Justice Reyes that the *ponencia* was already with Del Rosario.[58]

3. ATTY. ROSENDO B. EVANGELISTA, Judicial Staff Head, Office of Associate Justice Ruben T. Reyes, testified that as follows:

Around 1:00 p.m. on July 15, 2008, Justice Reyes instructed him to have signature page 36 of the *ponencia* reprinted and circulated for signing allegedly because Justice Minita Chico-Nazario wanted to change her qualified concurrence thereon—"in the result"—to an unqualified concurrence. He thus instructed Jean Yabut, the stenographer in charge of finalizing drafts, to reprint page 36 of the Gilbert copy. Then he ordered the reprinted page circulated for signatures together with the other pages of the *ponencia*. He assumed that the original page 36 was discarded as it was no longer in their files. He likewise assumed that the signatures were completed on the reprinted page 36 as the Gilbert copy was forwarded around 3:00 p.m. to the OCJ per standard operating procedure.[59] He was not informed then by Justice Reyes or anybody that the promulgation of the Gilbert copy had been put on hold per agreement of the Justices.[60] He came to know that it was on hold only on July 17, 2008, when Del Rosario informed him upon his arrival at the office. Because the information was unusual and because it was his duty to make sure that signed decisions were promulgated, he asked Justice Reyes. Justice Reyes then confirmed that the promulgation of the *ponencia* was on hold.[61]

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[56] TSN, December 15, 2008, pp. 79-80.

[57] TSN, December 15, 2008, pp. 83-85.

[58] TSN, December 15, 2008, pp. 86-87.

[59] TSN, December 15, 2008, pp. 104-113, 139.

[60] TSN, December 15, 2008, p. 115.

[61] TSN, December 15, 2008, pp. 122-132.

After that, he just assumed that the Gilbert copy was in their office with Del Rosario who was assigned to keep such documents. However, he did not know exactly where in his work area Del Rosario kept it.[62] He did not make a photocopy of the Gilbert copy nor did he order Del Rosario and Manabat to make photocopies. Neither did he know how the Gilbert copy was photocopied. He only came to know about the leakage last December 10, 2008.[63]

When, on January 22, 2009, he was recalled by the committee, he further testified as follows:

He occupied the last cubicle in the lawyers' room and the xerox machine was located outside the lawyers' room.[64] It was upon the instruction of Justice Reyes that their office reprint page 36 of the Gilbert copy and circulate it for signature. The instruction to circulate the reprinted page, which was circulated together with the other pages of the Gilbert copy, was given by him to either Manabat or Del Rosario.[65] He saw the original page 36 where Justice Chico-Nazario (supposedly) wrote the phrase "in the result" on top of her signature.[66] Aside from him, Court Attorney VI Czar Calabazaron, who principally researched on the case, also saw the qualification in Justice Chico-Nazario's signature while the Gilbert copy lay on top of Justice Reyes's coffee table inside his chambers. He recalled that at about 12:30 p.m. or before 1:00 p.m. right after the *En Banc* session on July 15, 2008, Justice Reyes called the(sic) him and Atty. Calabazaron to his chambers.[67] In that meeting, Justice Reyes phoned Justice Chico-Nazario after noticing that Justice Chico-Nazario's signature bore the notation "in the result."[68] He, however, did not hear what they talked about

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[62] TSN, December 15, 2008, pp. 156-157, 161-163.

[63] TSN, December 15, 2008, pp. 144-145, 148.

[64] TSN, January 22, 2009, pp. 3-4.

[65] TSN, January 22, 2009, pp. 7-9.

[66] TSN, January 22, 2009, pp. 9-11.

[67] TSN, January 22, 2009, pp. 12-15, 23-24, 42.

[68] TSN, January 22, 2009, pp. 16-19, 37-38.

since the less-than-five-minute phone conversation was inaudible, even though he was just approximately one meter away.[69] Justice Reyes thereafter instructed him to reprint the second signature page (page 36). He assumed from the context of the instruction that it was due to the change in Justice Chico-Nazario's concurrence, without asking Justice Reyes the reason therefor.[70] He then directed the stenographer to, as she did, reprint the second signature page, page 36, which was brought in to Justice Reyes in his chambers.[71]

He attended the oral arguments on a case scheduled at 1:30 p.m. on that day (July 15, 2008) and arrived at the session hall before that time.[72] As far as he could recall, he went down to the Office of Justice Reyes about 3:00 p.m. to retrieve a material needed for the oral arguments. He denied having testified that he went down purposely to check if the *ponencia* had been circulated and the second signature page signed anew and to make sure that the *ponencia* had already been transmitted to the OCJ.[73] When confronted with the transcript of stenographic notes, he maintained that it was part of his duties to see to it that every *ponencia* of Justice Reyes was promulgated.[74] He was sure that he went down to their office at around 3:30 p.m., although he could not recall his purpose for doing so. It was probably to get some materials related to the oral arguments, and that it just so happened that Del Rosario saw him and informed him that the Gilbert copy had already been transmitted to the OCJ.[75]

When asked as to the whereabouts of the original signature page 36, he surmised that it must have been shredded since it was not made part of the official documents submitted to the

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[69] TSN, January 22, 2009, pp. 19-21, 38-41.

[70] TSN, January 22, 2009, pp. 18, 21-22, 24.

[71] TSN, January 22, 2009, pp. 24-26, 53-54.

[72] TSN, January 22, 2009, pp. 28, 34-35.

[73] TSN, January 22, 2009, pp. 28-29.

[74] TSN, January 22, 2009, pp. 30-32.

[75] TSN, January 22, 2009, pp. 32-33, 36-37.

OCJ.[76] While he searched for it in his cubicle, it could no longer be located.[77] He did not inquire from Justice Reyes or from Del Rosario who also had access to that page, because he assumed that it could not be located since what was submitted to the OCJ was the one where Justice Chico-Nazario's concurrence was no longer qualified by the phrase "in the result."[78] As he was attending the oral arguments, he had no opportunity to see the reprinted signature page 36 with the affixed signatures prior to the transmittal to the OCJ.[79]

He came to know that the Gilbert copy was retrieved on July 16, 2008.[80] It was Del Rosario who informed him on July 17, 2008 that the promulgation of the *ponencia* was on hold and was returned to their office.[81] Justice Reyes did not advise them earlier that the promulgation was on hold.[82] After learning about it, he inquired from Justice Reyes who confirmed that the promulgation was indeed on hold. He never asked for the reason even though that was their first "on hold" incident because he thought that the case would be called again at another session.[83] He read the newspaper reports about the unpromulgated *ponencia* but did not validate them with Justice Reyes.[84]

He assumed that Del Rosario, being the custodian, kept the Gilbert copy in their office.[85] Their office reprinted the second signature page 36 of the Gilbert copy.[86] When shown page 36

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[76] TSN, January 22, 2009, p. 42.

[77] TSN, January 22, 2009, pp. 55-56, 61.

[78] TSN, January 22, 2009, pp. 57-58, 62.

[79] TSN, January 22, 2009, pp. 58-59.

[80] TSN, January 22, 2009, p. 43.

[81] TSN, January 22, 2009, p. 44.

[82] TSN, January 22, 2009, p. 45.

[83] TSN, January 22, 2009, pp. 45-50.

[84] TSN, January 22, 2009, pp. 51-53.

[85] TSN, January 22, 2009, p. 63.

[86] TSN, January 22, 2009, p. 64.

of the Gilbert copy by the committee, he assumed that it was the reprinted page since Justice Chico-Nazario's signature no longer contained any qualification.[87] He stated that it was the practice of their office to photocopy drafts signed by Justice Reyes and to furnish the other Justices with advance copies for their review before the session. Only such drafts were photocopied. *Ponencias*, which had already been signed by the other Justices and printed on Gilbert paper, were never photocopied. Del Rosario only logged them in his logbook and prepared soft copies for submission to the Division Chair or the Chief Justice.[88] He assured the committee that this practice was 100% complied with despite the fact that he was not one of those assigned to photocopy, but later yielded to given situations by Justice Carpio Morales.[89]

When directed to compare the front page of the photocopy Biraogo submitted as Annex "C" to his Compliance to the Show Cause Order with the original Gilbert copy submitted to the committee by Justice Reyes, Atty. Evangelista noticed the difference in the dates of the agenda. He noted that Biraogo's copy, which was the copy allegedly leaked to him, bore the agenda date "July 15, 2008," while the Gilbert copy submitted by Justice Reyes to the committee bore the agenda date "July 29, 2008." He also noted that the item numbers were also different because the *Limkaichong* case was listed as Item No. 52 in the photocopy submitted by Biraogo, whereas in the Gilbert copy, the case was listed as Item No. 66.[90] To him, it was probable that Biraogo got his copy from another source but it was not probable that Biraogo photocopied a copy in the office.

Only a few persons were authorized to operate the xerox machine in their office, namely, Conrado Bayanin, Jr., Armando

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[87] TSN, January 22, 2009, pp. 65-66.

[88] TSN, January 22, 2009, pp. 66-68, 79.

[89] See TSN, January 22, 2009, pp. 69-70. Justice Carpio Morales pointed out that given the set up and the procedures in the Office of Justice Reyes, it was possible for a member of the staff to photocopy a signed *ponencia* in Gilbert form without the other members of the staff noticing what particular document was being photocopied.

[90] TSN, January 22, 2009, pp. 71-72, 75.

Del Rosario, Chester Del Castillo, a certain Leonard and a certain Ramon.[91] He could not recall who among the five had been directed to photocopy the July 15, 2008 draft.[92] He ventured a guess that the top page of the Gilbert copy might have been reprinted but could not impute any motive to any person.[93] Even if he was the staff head, he was not privy to the preparation of the first page nor of the top cover bearing the date "July 29, 2008" copy.[94]

Finally, he manifested that from the time the Gilbert copy was signed by 14 Justices until December 15, 2008, he did not acquire exclusive control or possession of the Gilbert copy because Del Rosario was the custodian thereof.[95] He reiterated that he did not know where, exactly, Del Rosario kept the documents. **He admitted that he was remiss in his duties as staff head for not knowing.**[96] It was their practice not to lock drawers.[97] He was aware that Justice Reyes eventually prepared another draft of a *ponencia* changing his position in the *Limkaichong* case because he helped in the research in November 2008.[98] He never consulted the Gilbert copy because he had a softcopy thereof in his computer.[99] He did not ask why Justice Reyes was departing from his original position.[100] He denied that he knew Biraogo, Limkaichong, Jerome Paras, Olive Paras or any party to the case.[101]

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[91] TSN, January 22, 2009, pp. 73-75, 77-78.

[92] TSN, January 22, 2009, pp. 78-80.

[93] TSN, January 22, 2009, pp. 83-85.

[94] TSN, January 22, 2009, pp. 87-88.

[95] TSN, January 22, 2009, pp. 94-95.

[96] TSN, January 22, 2009, pp. 97-98.

[97] TSN, January 22, 2009, pp. 88-90, 97.

[98] TSN, January 22, 2009, pp. 100-101.

[99] TSN, January 22, 2009, pp. 101-104.

[100] TSN, January 22, 2009, pp. 104-105.

[101] TSN, January 22, 2009, pp. 98-99.

He winded up his testimony by manifesting that the investigation was an experience that he hoped would not happen again and that he would not have to undergo again.[102]

4. ASSOCIATE JUSTICE MINITA V. CHICO-NAZARIO testified as follows:

She signed the Gilbert copy only once, in the *En Banc* conference room before going to the *En Banc* dining hall.[103] Justice Reyes was beside her, looking on, when she affixed her signature. Immediately after signing, she returned the Gilbert copy to Justice Reyes who circulated it for the signatures of the other Justices. She remembered that Justice Reyes was holding the document even when the Justices were already at the dining hall. She did not photocopy the *ponencia* nor was there any opportunity for her to do so as there was only one Gilbert copy and the only time she held it was when she affixed her signature. She added that her concurrence to the *ponencia* was without qualification but when it was noted during lunch that most of the Justices had simply concurred "in the result," she and Justice Teresita Leonardo-De Castro signified their intention to qualify their concurrence and concur likewise only "in the result."[104] However, she was no longer able to indicate the change on the document as she and the other Justices had decided to put on hold the promulgation of the decision until after holding oral arguments on the Limkaichong case. No reprinted signature page was ever sent to her office for her signature and she did not affix her signature on any other copy of the *ponencia*. She was not the last to sign the *ponencia*.[105]

5. ASSOCIATE JUSTICE TERESITA J. LEONARDO-DE CASTRO testified as follows:

She signed the Gilbert copy right after the *En Banc* session and Justice Reyes was right beside her when she signed the *ponencia*.[106] No reprinted signature page 36 was ever sent to

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[102] TSN, January 22, 2009, pp. 107-108.

[103] TSN, December 16, 2008, pp. 3-4.

[104] TSN, December 16, 2008, pp. 4-5, 12-16.

[105] TSN, December 16, 2008, pp. 3-4, 12-14, 17.

[106] TSN, December 16, 2008, pp. 20-21.

her office for signature and she did not affix her signature on any other copy of the *ponencia*. She did not photocopy the *ponencia* and there could have been no opportunity to do so right after she signed it.[107]

6. ASSOCIATE JUSTICE ANTONIO EDUARDO B. NACHURA testified as follows:

He believed that he signed the *ponencia* in the *En Banc* conference room just before he went to the *En Banc* dining hall for lunch. He believed he was never sent a reprinted signature page. He either returned the *ponencia* to Justice Reyes right after signing it or passed it on to the other Justices for them to sign. He could not recall if he was the last to sign the *ponencia*. Asked whether he leaked the decision, Justice Nachura replied that he did not. Nor did he order any of his staff to photocopy it. In fact, there was no opportunity to photocopy the *ponencia* as he was not in custody thereof.[108] Although he knew the husband of one of the petitioners, Olivia Paras, neither she nor her husband ever asked for a copy of the *ponencia*.[109]

7. ASSISTANT COURT ADMINISTRATOR JOSE MIDAS P. MARQUEZ, Chief, Public Information Office (PIO), testified as follows:

The copy of Biraogo's undated letter with the attached copy of the unpromulgated *ponencia* of Justice Reyes, which he furnished the *En Banc*, came from a member of the media. Around 3:00 p.m. on December 9, 2008, a reporter called him on the phone, asking if he would like to give a statement because Biraogo was going to hold a press conference about the *Limkaichong* case later that day at Barrio Fiesta Restaurant, in front of the Court of Appeals. He requested the reporter to inform him of what was going to be taken up during the press conference. The reporter went to his office around 5:00 p.m. the same day, and furnished him a copy of Biraogo's undated letter. Attached to the letter was a copy of the unpromulgated *ponencia*. The reporter informed him that Biraogo distributed

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[107] TSN, December 16, 2008, p. 24.

[108] TSN, December 16, 2008, pp. 29-33, 38-40.

[109] TSN, December 16, 2008, pp. 44-45.

to the media during the press conference copies of the letter and the attachment.[110]

Sometime in **October 2008**, months before Biraogo held the press conference, Jarius Bondoc had published a blind item column on the *Limkaichong* case. On **November 8, 2008**, another column, this time by columnist Fel Maragay, came out in the *Manila Standard*. The words used in both columns were the same so he thought that there was really an effort to report the story in the media. Knowing Jarius Bondoc to be a respectable journalist, he met with him to clarify matters as many of the statements in the news item were false or inaccurate. He provided Bondoc with the surrounding circumstances on the matter so that Bondoc would have the proper context in case he was again requested to publish the story. Bondoc offered to write about what he had said, but he told Bondoc that there was no need because there was no truth to the story given to the media anyway. He left it to Bondoc whether he would use the new information if he was again asked to publish the story.[111]

The leak could not have come from the PIO as they were never given a copy of the unpromulgated *ponencia* bearing the signatures of 14 Justices. He also did not bring drafts from the OCJ to the PIO. It is only after a case has been promulgated that the Clerk of Court gives the PIO copies. But in this case, the Clerk of Court did not even have a copy as the decision had not been signed by the Chief Justice.[112]

8. RAMON B. GATDULA, Executive Assistant III, Office of the Chief Justice, testified as follows:

On July 15, 2008, at 3:30 p.m., he received from Armando Del Rosario the Gilbert copy of the *ponencia* together with the *rollos* and two diskettes. He kept the Gilbert copy in his locked cabinet overnight and gave it to the Chief Justice's secretary the following day. In the afternoon of July 16, 2008, an employee from the Office of Justice Reyes retrieved the Gilbert copy. He did not inquire anymore about the reason why they were

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[110] TSN, December 16, 2008, pp. 48-50.

[111] TSN, December 16, 2008, pp. 51-57.

[112] TSN, December 16, 2008, pp. 58, 63, 65.

retrieving it as it was common practice for the offices of the *ponentes* to retrieve drafts whenever there were corrections. When asked whether he photocopied the *ponencia*, Gatdula said that he does not photocopy the decisions he receives. Their office also never photocopies decisions. They forward such decisions straight to the Clerk of Court for promulgation and they receive copies thereof only after the Clerk of Court has affixed her signature thereon and indicated the date of promulgation.[113]

9. ATTY. MA. LUISA D. VILLARAMA, the *En Banc* Clerk of Court, testified on the procedure for promulgation of *ponencias*.

After the Chief Justice affixes his signature on a decision, the decision is brought together with the *rollo* to the *En Banc* Clerk of Court to be logged, recorded and checked. If the necessary requirements for promulgation are present, she signs the decision. It is at this time that the decision is considered as promulgated. The Office of the Clerk of Court distributes copies to the parties to the case. The date of promulgation is then encoded in the case monitoring system and a copy of the decision is given to the PIO.[114] Decisions reaching their office usually come with the *rollos* except where a particular decision is considered rush.[115]

She denied having seen the unpromulgated *ponencia* of Justice Reyes and stated that the same never reached their office during the period from July 16, 2008 to December 10, 2008.[116] She and her staff only learned of the draft decision after it was circulated by the media.[117] In her office, decisions for promulgation are always brought to Verna Albano for recording, then to her for signature.[118] If Verna is absent, it is Atty. Felipa Anama, the assistant clerk of court, who receives the *ponencia*s

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[113] TSN, December 16, 2008, pp. 82-91, 95, 100-103, 107-108, 115.

[114] TSN, January 14, 2009, pp. 5-8.

[115] TSN, January 14, 2009, pp. 9-11.

[116] TSN, January 14, 2009, pp. 12-14, 25-26.

[117] TSN, January 14, 2009. pp. 15-17, 20-21.

[118] TSN, January 14, 2009, pp. 22-23.

and *rollos*.[119] She further stated that in her more than 10 years of work in the Court, she never heard any incident of a draft *ponencia* being leaked except this one.[120]

10. MAJOR EDUARDO V. ESCALA, Chief Judicial Staff Officer of the Security Division, Office of Administrative Services, testified as follows:

Security personnel inspect all offices everyday at 5:00 p.m.[121] Security personnel used to inspect even the offices of the Justices, but they stopped doing so since last year.[122] As far as photocopiers are concerned, security personnel only make sure that these are unplugged after office hours.[123] His office has nothing to do with the operation of the machines.[124] They always check if employees bring out papers from the Court. But they encounter problems especially from the offices of Justices because employees from these offices always claim that they have been allowed or instructed by their Justice to bring papers home with them, and there is no way to check the veracity of those claims.[125] Since he assumed office on July 14, 2008, he is not aware of any record of a leak.[126] He suggested that the memory cards of the machines be checked.[127]

11. ATTY. FELIPA B. ANAMA, Assistant Clerk of Court, testified as follows:

She acts as Clerk of Court in the absence of Atty. Villarama.[128] Their office never releases unpromulgated

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[119] TSN, January 14, 2009, pp. 23-25.

[120] TSN, January 14, 2009, pp. 28-29.

[121] TSN, January 16, 2009 PM Session, p. 3.

[122] TSN, January 16, 2009 PM Session, pp. 5-8.

[123] TSN, January 16, 2009 PM Session, p. 9.

[124] TSN, January 16, 2009 PM Session, pp. 10-11.

[125] TSN, January 16, 2009 PM Session, p. 14.

[126] TSN, January 16, 2009 PM Session, pp. 14-15.

[127] TSN, January 16, 2009 PM Session, p. 18.

[128] TSN, January 16, 2009 PM Session, p. 21.

ponencias[129] and they ascertain that every decision or resolution to be promulgated is complete.[130] She remembered that their office released the Show Cause Resolution dated December 10, 2008 and had it delivered personally to Biraogo as it was an urgent resolution.[131] Willie Desamero was the employee who personally served the resolution on Biraogo.[132]

She indicated that it was very difficult to serve something at Biraogo's residence for by the account of Desamero, he was stopped at the guard house and was made to wait in the clubhouse until Biraogo was notified of his presence; and that it took Desamero two hours to serve the December 10, 2008 resolution on Biraogo.[133]

She has been with the Supreme Court for 29 years and she never encountered a leak nor did she ever issue a resolution or decision without the signature of the Chief Justice.[134]

12. WILLIE DESAMERO, Records Officer III, Office of the Clerk of Court *En Banc*, testified as follows:

He served the December 10, 2008 Resolution on Biraogo on December 12, 2008.[135] It was difficult to serve the Resolution. It took him six rides to get to Biraogo's subdivision in Laguna and when he got there, he was stopped by the security guards at the entrance of the subdivision. They asked him to wait at the clubhouse and it took Biraogo two hours to arrive.[136] When Biraogo saw him, Biraogo commented, *"Ang bilis naman"*[137] and *"bakit ka lang naka-tricycle? Meron naman kayong sasakyan?"*[138] Biraogo read the Resolution before he signed

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[129] TSN, January 16, 2009 PM Session, p. 23.

[130] TSN, January 16, 2009 PM Session, pp. 23-24.

[131] TSN, January 16, 2009 PM Session, pp. 26-29.

[132] TSN, January 16, 2009 PM Session, p. 26.

[133] TSN, January 16, 2009 PM Session, pp. 29-33, 37, 39.

[134] TSN, January 16, 2009 PM Session, pp. 33-35.

[135] TSN, January 16, 2009 PM Session, pp. 44-46.

[136] TSN, January 16, 2009 PM Session, pp. 46-52.

[137] TSN, January 16, 2009 PM Session, p. 54.

[138] TSN, January 16, 2009 PM Session, p. 52.

to receive the document.[139] Biraogo arrived in a car and had a back-up car.[140] Biraogo was in his early 50s, was wearing short pants, and had a sarcastic smile at that time.[141]

An officemate of his had also been to Biraogo's house to serve some Resolutions.[142] While it was not his usual duty to serve court processes, Atty. Anama and Atty. Villarama requested him to serve the resolution on Biraogo since the regular process servers in their office were not then available and he is the only one in their office who resides in Laguna.[143] In his years of service with the Court, he knew of no case which involved leakage of court documents.[144]

13. GLORIVY NYSA TOLENTINO, Executive Assistant I, Office of Associate Justice Antonio Eduardo B. Nachura, testified as follows:

She is responsible for communications, drafts and door-to-door papers that come in at the Office of Justice Nachura.[145] She presented page 267 of her logbook, to which Justice Reyes had earlier invited the committee's attention. According to the logbook entry, the Gilbert copy was brought to their office on July 15, 2008 and that Justice Nachura signed the copy. However, since it is not office practice to record the time of receipt or release, she could not remember what time the Gilbert copy was brought to their office for signature.[146] Nonetheless, the Gilbert copy did not stay long in their office because it was a door-to-door paper and was accordingly given preferential treatment. Justice Nachura immediately signed the *ponencia* when she gave it to him.[147] However, she could not recall if

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[139] TSN, January 16, 2009 PM Session, p. 56.

[140] TSN, January 16, 2009 PM Session, pp. 56-57.

[141] TSN, January 16, 2009 PM Session, pp. 61-62, 66-67.

[142] TSN, January 16, 2009 PM Session, pp. 65, 69-70.

[143] TSN, January 16, 2009 PM Session, pp. 70-71.

[144] TSN, January 16, 2009 PM Session, pp. 80-82.

[145] TSN, January 16, 2009 PM Session, pp. 86-87.

[146] TSN, January 16, 2009 PM Session, pp. 93-94.

[147] TSN, January 16, 2009 PM Session, pp. 101-102.

Justice Nachura was the last to sign the Gilbert copy.[148] She added that their office did not have a copy of the unpromulgated *ponencia* bearing the signatures of 14 Justices. They only had the advance copies circulated for concurrence.[149]

14. ONOFRE C. CUENTO, Process Server, Office of the Clerk of Court *En Banc*, testified as follows:

He personally served two resolutions on Biraogo at his residence last August 6, 2008, together with driver Mateo Bihag.[150] On the day he served the resolutions, they were stopped at the guardhouse and were escorted by a barong-clad security officer to Biraogo's house.[151] They had a hard time getting to the residence of Biraogo whom he does not personally know.[152] Biraogo did not mention or send his regards to any member of the Court.[153]

15. CHESTER GEORGE P. DEL CASTILLO, Utility Worker, Office of Associate Justice Ruben T. Reyes, testified as follows:

He joined the staff of Justice Reyes in September 2007 upon the recommendation of Court of Appeals Justice Mariano Del Castillo and Retired Justice Cancio Garcia.[154]

He was the most proficient in the use of the photocopiers in the office of Justice Reyes so it was to him that the task of photocopying documents was usually given by Del Rosario and the lawyers.[155] He, however, never photocopied any paper bearing the signatures of the Justices.[156] He did not handle *ponencias* in Gilbert paper nor ever photocopy any *ponencia* in Gilbert paper.[157]

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148 TSN, January 16, 2009 PM Session, pp. 105-107.

149 TSN, January 16, 2009 PM Session, p. 119.

150 TSN, January 19, 2009, pp. 10-12, 14, 16, 18, 40, 68.

151 TSN, January 19, 2009, pp. 16-18.

152 TSN, January 19, 2009, pp. 48-49, 54-55, 65-66.

153 TSN, January 19, 2009, pp. 59-60.

154 TSN, January 19, 2009, pp. 75-76.

155 TSN, January 19, 2009, pp. 80-82.

156 TSN, January 19, 2009, pp. 83-84, 90-91.

157 TSN, January 19, 2009, p. 92.

He usually left the office at 4:30 p.m. He sometimes saw members of the staff photocopying papers even beyond 4:30 p.m. It was Del Rosario who often gave orders to photocopy drafts and who was the most trusted member of the staff as demonstrated by the fact that he could go in and out of Justice Reyes's chambers.[158] Del Rosario never left the office before Justice Reyes and he (Del Rosario) often left late.[159]

He had never been to Barangay Malamig although he had been to Biñan, Laguna.[160] He does not know Biraogo or his wife.[161] Neither does he know Paras.[162] He did not know where Gilbert copies were kept.[163] When he was asked who would leave the office first, Justice Reyes or Del Rosario, he said he did not know. Del Rosario was tasked to lock the main door of the office.[164]

The office staff knew of the leaked decision on the *Limkaichong* case, but the staff remained apathetic and did not talk about it.[165] The apathy was probably because the staff thought that the matter had already been settled since Del Rosario and Atty. Evangelista had already been interviewed.[166] He was not sure if anyone from their office was involved in the leakage.[167] He was not part of the meeting called by Justice Reyes before the start of the investigation.[168] Only Atty. Evangelista, Del Rosario, and Manabat were called to the

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[158] TSN, January 19, 2009, pp. 95-101, 116.

[159] TSN, January 19, 2009, pp 119-121.

[160] TSN, January 19, 2009, p. 112.

[161] TSN, January 19, 2009, pp. 113.

[162] TSN, January 19, 2009, p. 115.

[163] TSN, January 19, 2009, p. 117.

[164] TSN, January 19, 2009, pp. 120-121.

[165] TSN, January 19, 2009, pp. 128-129.

[166] TSN, January 19, 2009, p. 129.

[167] TSN, January 19, 2009, pp. 138-139.

[168] TSN, January 19, 2009, p. 139.

meeting.[169] He surmised that the meeting was about the leakage.[170]

16. CONRADO B. BAYANIN, JR., Messenger, Office of Associate Justice Ruben T. Reyes, who was called by the committee upon Justice Reyes's suggestion, testified as follows:

Part of his duties in the Office of Justice Reyes was to receive and release papers and *rollos* as he was seated near the door.[171] It was not his duty to handle or receive *ponencias* in Gilbert form.[172] He could not remember if he had ever received any paper in connection with the *Limkaichong* case.[173] While he knew how to operate the xerox machine, just like all the other utility workers in the office,[174] he had never photocopied anything signed by the Justices, especially those on Gilbert paper.[175]

When asked who handled photocopies ordered by Justice Reyes, he replied that he did not know.[176] He did not know and had no opinion on how the *ponencia* was leaked.[177] He only knew that his officemates talked about the leak,[178] but he did not know specifically what his officemates talked about.[179] Before Justice Reyes's retirement ceremony, Justice Reyes called him to his chambers and very calmly asked him if he knew if anybody had photocopied the unpromulgated *ponencia*.[180]

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169 TSN, January 19, 2009, p. 140.

170 TSN, January 19, 2009, pp. 140-141.

171 TSN, January 19, 2009, pp. 158-160.

172 TSN, January 19, 2009, p. 165.

173 TSN, January 19, 2009, p. 161.

174 TSN, January 19, 2009, pp. 166-168.

175 TSN, January 19, 2009, pp. 175-181.

176 TSN, January 19, 2009, p. 171.

177 TSN, January 19, 2009, pp. 213-214.

178 TSN, January 19, 2009, pp. 214-217.

179 TSN, January 19, 2009, pp. 214-215.

180 TSN, January 19, 2009, pp. 223-225.

17. FERMIN L. SEGOTIER, Judicial Staff Assistant II and receptionist at the Office of Associate Justice Antonio Eduardo B. Nachura, testified as follows:

> His duty is to receive communications, but only Glorivy Nysa Tolentino keeps a logbook for the door-to-door papers that come to their office.[181] He does not remember any details pertaining to the July 15, 2008 signing of the *Limkaichong Ponencia*, aside from the fact that it was to Justice Reyes's staff to whom he gave it back.[182] He assumed that it was to Del Rosario to whom he returned the Gilbert copy because in the Office of Justice Reyes, Del Rosario was the one in charge of circulating *ponencias* in Gilbert form for signature.[183] He could not recall handing a Gilbert paper to Manabat.[184] The *ponencia* stayed only for a short time (about 5 minutes) in their office because it was a door-to-door paper. After it was signed by Justice Nachura, it was handed back to the staff of Justice Reyes, so there was no chance for them to photocopy the *ponencia*.[185] It was not their standard operating procedure to leave any Gilbert paper in their office if it could not be signed right away.[186]

18. RETIRED JUSTICE RUBEN T. REYES, for his part, submitted during the hearing on January 22, 2009, a written statement entitled "Notes/Observations" (Notes) consisting of 12 paragraphs. In his Notes, Justice Reyes stressed the following:

> Biraogo did not point to him as the source of the leak of the unpromulgated *ponencia*;[187] in Biraogo's December 22, 2008 Compliance with the Court's Show Cause Order, Biraogo stated that his informant was allegedly a "SC concerned employee" who left a brown envelope with a letter and some documents in his Biñan, Laguna home; it could be seen from the attachments

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[181] TSN, January 19, 2009, pp. 231-235.

[182] TSN, January 19, 2009, pp. 235-243.

[183] TSN, January 19, 2009, pp. 245-248.

[184] TSN, January 19, 2009, p. 249.

[185] TSN, January 19, 2009, pp. 250-255.

[186] TSN, January 19, 2009, pp. 253-254.

[187] See Paragraph 1 (Notes/Observations).

to Biraogo's Compliance that it was not only the unpromulgated *ponencia* or Gilbert copy that was leaked but also two other confidential documents: his Revised Draft *ponencia* for the June 17, 2008 agenda (attached as Annex "B" to the Compliance) and Justice Carpio's *Reflections* (attached as Annex "D"); and since these other documents were circulated to all Justices, the investigation should not only focus on the leak of the unpromulgated *ponencia* but also on the leak of the two other confidential and internal documents of the Court.[188]

Justice Reyes also pointed out in his Notes as follows: the committee should not only look into his office but also the offices of Justice Carpio and the other Justices. He, however, reiterated that he had said in his media interviews that he believed that none of the Justices themselves, much less the Chief Justice, leaked the *ponencia* or authorized its leakage.

Justice Reyes pointed out that Biraogo's informant mentioned a certain Atty. Rosel, who was allegedly a close friend and former partner of Justice Carpio. Justice Reyes said that Atty. Rosel allegedly asked a favor from Justice Carpio before the latter wrote his *Reflections*.[189] Thus, he said, the committee should also question Atty. Rosel and even Justice Carpio himself.

On why he did not lift a finger when Biraogo got hold of the decision, despite reports regarding the leak, Justice Reyes stated that he was on a sabbatical leave with the Mandatory Continuing Legal Education research in four States in the United States from October 10, 2008 to November 1, 2008.

He had nothing to do with the leak and he even prepared a second draft decision (deviating from his prior disposition) after oral arguments were held on the case.

Thus, in his Notes, he posed: "If he leaked it, why would he prepare a second different decision?" He willingly obliged to the holding of oral arguments. He had no commitment to anybody and had no reason to leak the unpromulgated *ponencia*.[190] He added, "[I]f he had a hand in the leak, why

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[188] See Paragraphs 2 and 5 (Notes/Observations).

[189] See Paragraph 4 (Notes/Observations).

[190] See Paragraph 7 (Notes/Observations).

would it include Justice Carpio's *Reflections* which was contrary to the unpromulgated decision?"

Justice Reyes, still in his Notes, stated that no Justice in his right mind would leak the unpromulgated *ponencia* or other confidential documents, such as the Revised Draft and Justice Carpio's *Reflections*.

He went on to refer to Biraogo's Compliance that the informant was purportedly "an old hand in the Supreme Court who was accustomed to the practices of the Justices" and had a "circle" or group in the Supreme Court. Since all his office staff, except two stenographers, one utility worker and one messenger, were all new in the Court, then the "old hand" referred to could not have come from his office. But if it could be proven by evidence that one of his staff was the source of the leak, Justice Reyes argued that only that staff should be made liable, for he had publicly declared that he did not and would never allow nor tolerate such leakage.[191]

More on Justice Reyes's Notes: He suggested that *Newsbreak* writers Marites Vitug and Aries Rufo be cited for contempt of court, for obtaining, without lawful authority, confidential information and documents from the Court, officials or employees, and for writing false, malicious articles which tended to influence the investigation of the committee and to degrade, impede and obstruct the administration of justice.[192]

Aside from submitting his Notes, Justice Reyes also testified as follows:

While he was first heard on January 16, 2009, after he presented a 9-paragraph written statement, he noticed that it needed refinement and revision so he requested for time to edit it. Hence, he submitted his above-mentioned Notes on January 22, 2009.

Justice Reyes identified the Gilbert copy, which he submitted earlier to the committee for safekeeping, and his Notes."[193] He

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[191] See Paragraphs 3 and 9 (Notes/Observations).

[192] See Paragraph 11 (Notes/Observations).

[193] TSN, January 22, 2009, pp. 117-118.

clarified that the Compliance he was referring to in his Notes was Biraogo's December 22, 2008 Compliance with the Court's Show Cause Order.[194]

His desire to include Justice Carpio in the investigation, per number 4 of his Notes, came about because it appeared from Biraogo's Compliance and from the alleged informant's letter that it was not only the unpromulgated *ponencia* signed by 14 Justices that was leaked but also the Revised Draft *ponencia* and Justice Carpio's *Reflections*.[195] He suggested that what should be investigated was the source of the three documents.[196] Justice Quisumbing replied that the matter seemed settled because Justice Reyes also mentioned in Paragraph No. 6 of his Notes that he believed that none of the Justices, much less the Chief Justice, caused or authorized the leak.[197] Justice Reyes stressed that he thought it was only fair that the Committee also call Justice Carpio to shed light on the matter in the same way that he was asked to shed light thereon.[198]

Justice Carpio Morales pointed out that Justice Reyes's *ponencia* as signed by 14 Justices did not come into the possession of the other Justices but only of Justice Reyes.[199] She added that if logic were followed, then all of the Justices should be investigated because copies of Justice Carpio's *Reflections* were circulated to all. She declared that she was willing to be investigated and that she was volunteering to be investigated.[200] However, she pointed out that the logic of Justice Reyes was misplaced, considering that the documents attached to Biraogo's Compliance were allegedly received at the same time. If Biraogo received the documents at the same time and one Justice never took hold of the *ponencia* as signed, said Justice could not have made the leak to Biraogo.[201]

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[194] TSN, January 22, 2009, pp. 118-119.

[195] TSN, January 22, 2009, pp. 119-120.

[196] TSN, January 22, 2009, pp. 120-121.

[197] TSN, January 22, 2009, p. 122.

[198] TSN, January 22, 2009, p. 123.

[199] TSN, January 22, 2009, pp. 121, 125.

[200] TSN, January 22, 2009, p. 124.

[201] TSN, January 22, 2009, pp. 125-126.

Justice Reyes went on to testify as follows: The Gilbert copy which he submitted to the committee was given to him by Del Rosario.[202] He did not photocopy the Gilbert copy nor provide Biraogo a copy thereof or instruct any of his staff to photocopy the same.[203]

The xerox copy of the Gilbert copy attached to the Compliance of Biraogo appeared to be the same as the committee's copy because he (Justice Reyes) looked at the initials on each page and found them to be similar.[204] Justice Quisumbing thereupon invited Justice Reyes's attention to the cover page of the Gilbert copy which had been submitted to and in custody of the committee (committee's copy).[205] Upon perusal thereof, **Justice Reyes stated that the cover page of the committee's copy did not appear to be the same as the cover page of Biraogo's copy**. He observed that the cover page of the committee's copy showed the agenda date "July 29, 2008," and that the Limkaichong case was listed as Item No. 66, **whereas** the cover page of Biraogo's copy showed the agenda date "July 15, 2008," and that the same case was listed as Item No. 52.[206] Justice Reyes then qualified his earlier statement and said that he was only referring to those pages of the decision itself which bore his initials, when he spoke of similarity, and said that the cover page did not bear his initials.[207]

Justice Corona pointed out, and Justice Reyes confirmed, that page 1 of the committee's copy also differed from page 1 of Biraogo's copy. Justice Corona pointed that **in the committee's copy, there were asterisks after the names of Justice Azcuna and Justice Tinga and footnotes** that the two were on official leave, **whereas no such asterisks and footnotes appeared on page 1 of Biraogo's copy**.[208] Justice Corona also pointed out and Justice Reyes once again confirmed that there was a slight variance between the initials on

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[202] TSN, January 22, 2009, pp. 127-129.

[203] TSN, January 22, 2009, pp. 130-131.

[204] TSN, January 22, 2009, pp. 129-132.

[205] TSN, January 22, 2009, p. 132.

[206] TSN, January 22, 2009, pp. 133-136.

[207] TSN, January 22, 2009, pp. 136-137.

[208] TSN, January 22, 2009, pp. 138-140.

page 34 of the committee's copy and the initials on page 34 of Biraogo's copy.[209]

Justice Quisumbing then posed the question whether Justice Reyes would admit that there were at least two sources.[210] At this juncture, Justice Reyes **brought out another photocopy** (new copy or Justice Reyes's new copy) of the Gilbert copy to which new copy the left top corner of the top cover was stapled a 1"x1" piece of thick paper bearing the initials "RTR" and on the right top corner of the same cover appeared a handwritten notation reading "Gilbert copy." **Justice Reyes repeatedly stated that his new copy was a facsimile of the committee's copy**. He pointed out that the initials on page 34 of the new copy and that of the committee's copy matched. He concluded, however, that page 34 of Biraogo's copy was not a faithful reproduction of the committee's copy.[211] Justice Reyes avoided the question of whether he or his staff kept more than one xerox copy of the Gilbert copy that had been signed by majority or 14 members of the Court, saying that he could not say so because he did not personally attend to photocopying of decisions.[212] He stressed that his initials on page 34 of the new copy differed from the initials appearing on page 34 of Biraogo's copy.[213] He also pointed out that in Biraogo's copy, particularly on page 3, there was a handwritten correction superimposed over the misspelled name of Jerome Paras while no such handwritten correction appeared on page 3 of both the committee's copy and the new copy.[214] He added that he did not know who made the handwritten correction in Biraogo's copy and that the new copy he was presenting to the committee was **furnished to him by the committee.** Said copy was allegedly the xerox copy of the Gilbert copy.[215]

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[209] TSN, January 22, 2009, pp. 140-141.

[210] TSN, January 22, 2009, p. 143.

[211] TSN, January 22, 2009, pp. 144-145.

[212] TSN, January 22, 2009, pp. 145-146.

[213] TSN, January 22, 2009, p. 147.

[214] TSN, January 22, 2009, pp. 148-149.

[215] TSN, January 22, 2009, pp. 149-150.

Justice Reyes professed that he had nothing to do with the leak as he would not leak, authorize, allow, or tolerate any leak of his decision or revised draft. He dispelled any pecuniary profit from such leakage, especially since he was about to retire when the leak happened. He could not, however, say the same of his office staff since he did not want to speculate, so he was giving the committee the broadest latitude in calling any of his staff.[216]

Upon Justice Carpio Morales's interrogation, Justice Reyes stated that he found the new copy in his files just the week before the January 22, 2009 hearing.[217] Justice Carpio Morales then invited his attention to the fact that **page 1 of the new copy, like page 1 of Biraogo's copy, did not contain the footnotes and asterisks appearing in the committee's copy.** She also noted **that the copy of Biraogo and the new copy presented by Justice Reyes matched to a T.**[218] Justice Reyes only replied that he did not pay particular attention nor personally attend to the photocopying.[219]

Justice Reyes stated that there should only be one copy of the Gilbert copy,[220] but it appeared that he supplied the committee with two apparently different copies (the Gilbert copy and the new copy).[221] Justice Reyes noted that the new copy and Biraogo's copy did not match exactly as regards pages 3 and 34. He stressed that there appeared on page 3 of Biraogo's copy a handwritten correction over the misspelled name of Jerome Paras while no such correction was made on the new copy. Additionally, on page 34 of Biraogo's copy, his initial appeared to have a smudge while on page 34 of the new copy, there was no smudge.[222]

When asked to explain why the new copy, which he claimed to have been photocopied from the committee's copy, did not match the committee's copy on page 1 but matched page 1 of Biraogo's copy,

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[216] TSN, January 22, 2009, pp. 150-151, 210-211.

[217] TSN, January 22, 2009, pp. 154-155.

[218] TSN, January 22, 2009, pp. 156-157, 161, 163-166.

[219] TSN, January 22, 2009, p. 158.

[220] TSN, January 22, 2009, pp. 159-160.

[221] TSN, January 22, 2009, pp. 162-164.

[222] TSN, January 22, 2009, pp. 167, 171, 177-180.

Justice Reyes offered no explanation.[223] Justice Reyes also **refused to submit the new copy to the committee** ("Why should I?") and questioned the committee's request that he initial the controversial pages of the new copy.[224] Thus, the committee members decided to affix their signatures on the first five pages of the new copy and then drew a rectangle around their signatures and the date—January 22, 2009.[225] The committee then had the new copy photocopied.[226] Justice Corona soon noticed that **Justice Reyes was trying to hide the new copy between his files**. At that point, **Justice Corona pulled out the new copy from Justice Reyes's files. Justice Reyes then repeatedly said that he was not submitting it to the committee**.[227] The committee proceeded to discuss the other matters contained in Justice Reyes's Notes.

Justice Reyes at that point then stated that he had not withdrawn his standing motion for inhibition against Justice Carpio Morales, to which Justice Carpio Morales replied that she would remain impartial. Justice Carpio Morales likewise stressed that the committee would decide according to the evidence.[228]

Upon being asked by the committee, Justice Reyes said that he could not recall if he was holding the Gilbert copy after the *En Banc* session and while having lunch.[229] He stated that per standard arrangement, his staff would usually get his folders and bring them to his office.[230] As far as he could recall, before the Court adjourned, the members already knew that many concurred only in the result.[231] He could not recall, however, if the Chief Justice learned about it only at the dining room.[232]

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[223] TSN, January 22, 2009, p. 167.

[224] TSN, January 22, 2009, pp. 168-169, 172.

[225] TSN, January 22, 2009, pp. 173-176.

[226] TSN, January 22, 2009, p. 187.

[227] TSN, January 22, 2009, pp. 185-186.

[228] TSN, January 22, 2009, pp. 188-190.

[229] TSN, January 22, 2009, pp. 192-193.

[230] TSN, January 22, 2009, pp. 193-194.

[231] TSN, January 22, 2009, p. 194.

[232] TSN, January 22, 2009, pp. 194-195.

Justice Reyes denied having given Atty. Evangelista the instruction to reprint signature page 36 of the Gilbert copy and stated that it must have been Atty. Evangelista's sole decision. What Justice Reyes remembered telling Atty. Evangelista after the *En Banc* session was that many concurred only "in the result" and that Justice Chico-Nazario wanted to change her concurrence.[233] Justice Carpio Morales confronted him with certain portions of the December 15, 2008 TSN where he clearly volunteered the information that he was the one who instructed Atty. Evangelista to reprint page 36 which is the second signature page.[234] Justice Reyes replied that maybe Atty. Evangelista was under the mistaken impression that the change of the said page pushed through because, as it turned out, there was no qualification in the concurrence of Justice Chico-Nazario. He also insisted that he did not volunteer the information that he was the one who ordered the reprinting of page 36. He contended that he was in fact questioning Atty. Evangelista when the latter said that the instruction came from him.[235]

With regard to the "re-signing" by Justice Nachura,[236] Justice Reyes declared that it was difficult to speculate and rely on inaccurate recollection, especially since several months had passed. Justice Corona replied that the testimonies could not be inaccurate since there were entries in the logbook, showing that Justice Nachura indeed signed in his chambers.[237] Justice Reyes stated that the changing of the original signature page 36 was not carried out[238] and that Atty. Evangelista's recollection of the event was inaccurate. Justice Reyes also stated he could not recall calling Justice Chico-Nazario on the phone after the *En Banc* session on July 15, 2008.[239]

Justice Reyes stated that Del Rosario was assigned to keep and take care of the circulated drafts and *ponencias* printed on Gilbert

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[233] TSN, January 22, 2009, pp. 195-197.

[234] TSN, January 22, 2009, pp. 197-201.

[235] TSN, January 22, 2009, pp. 202, 204-205.

[236] In his testimony summarized above, Justice Nachura believed that he signed the Gilbert copy at the *En Banc* Conference Room.

[237] TSN, January 22, 2009, pp. 202-204.

[238] TSN, January 22, 2009, pp. 203-204.

[239] TSN, January 22, 2009, pp. 207-209.

paper, and from time to time Atty. Evangelista would have access to them since the latter was the judicial staff head.[240] Justice Reyes's staff members in October were the same until he retired on December 18, 2008.[241] Justice Reyes's impression of Biraogo's letter was that somebody who had an axe to grind against the Chief Justice or who wanted to discredit him could have done it.[242]

Justice Reyes said that he never had any personal interest in the case and argued that the best proof of this was that he did not stick to his original decision after the case was heard on oral arguments on August 26, 2008, just to prove that he was not beholden to any party.[243]

Justice Reyes could not offer a straight answer to the question of what his undue interest was in still trying to have the signature of all the Justices after he had taken his lunch and to forward the Gilbert copy and the *rollo etc*. to the OCJ **even after the decision to put the promulgation of the *ponencia* on hold was arrived at, at lunchtime** of July 15, 2008. He simply dismissed the recollections of his staff and preferred to believe Del Rosario's over those of Evangelista's or Manabat's. He insisted that he never had the chance to talk to Del Rosario or to Atty. Evangelista right after the *En Banc* session, and **claimed that he never gave the instruction to bring the Gilbert copy to the Office of Justice Nachura**. He likewise insisted that the testimony of Atty. Evangelista was incorrect and that he would rather believe Del Rosario's testimony.[244]

THE INVESTIGATING COMMITTEE'S FINDINGS OF FACT

From the testimonies of the witnesses, the committee finds the following facts established.

On July 15, 2008, even after the Justices had agreed at lunchtime to withhold the promulgation of the Gilbert copy in the *Limkaichong* case, Justice Reyes, under his **misimpression** that Justice Nazario had "concurred in the result" and that she would finally remove such

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[240] TSN, January 22, 2009, pp. 211-212.

[241] TSN, January 22, 2009, p. 220.

[242] TSN, January 22, 2009, p. 223.

[243] TSN, January 22, 2009, p. 224.

[244] TSN, January 22, 2009, pp. 225-232.

qualification, instructed his Judicial Staff Head, Atty. Evangelista, and Del Rosario to have the signature page 36 (where the names of Justices Nazario, Nachura and three others appeared) reprinted and to bring the Gilbert copy to the Office of Justice Nachura for signature as Justice Nachura, who was not participating in the oral arguments on the case scheduled at 1:30 that afternoon, might be going out. Jean Yabut was tasked by Atty. Evangelista to reprint the second signature page (page 36) on Gilbert paper.

The reprinted signature page 36, together with the rest of the pages of the Gilbert copy, was then given by Atty. Evangelista to Del Rosario. Del Rosario, in turn, gave the Gilbert copy, together with the reprinted signature page 36, to Manabat whom he instructed to go to the Office of Justice Nachura for him to affix his signature thereon.

Manabat immediately went to the Office of Justice Nachura and handed the Gilbert copy to Fermin Segotier, the receptionist at Justice Nachura's office. As the Gilbert copy was a door-to-door document, Segotier immediately gave it to Glorivy Nysa Tolentino who recorded it in her logbook. She then brought the Gilbert copy to Justice Nachura. When the reprinted page 36 of the Gilbert copy was brought out from Justice Nachura's chambers and returned to Tolentino, she recorded it in her logbook that it was already signed. The whole process took not more than five minutes. The Gilbert copy was returned to Manabat, who had waited outside the office of Justice Nachura.

Manabat then repaired to the chambers of **Justice Reyes who inquired from him if Justice Nachura had signed the reprinted page 36 to which he answered in the affirmative**. Manabat thereafter handed the Gilbert copy to Del Rosario.

When Atty. Evangelista, who was attending the oral arguments on a case scheduled that afternoon, went down the Office of Justice Reyes at about 3:30 p.m., he and/or Del Rosario must have eventually noticed that Justice Nazario did not, after all, qualify her concurrence on the original signature page 36 of the Gilbert copy with the words "in the result." Since **neither** Atty. Evangelista **nor** Del Rosario was **advised by Justice Reyes that the promulgation of the Gilbert copy was on hold,** Del Rosario brought the Gilbert copy, together with the *rollo*, records and diskettes to the OCJ to be promulgated and gave it at 3:30 p.m. to Ramon Gatdula of the OCJ. Gatdula later transmitted the Gilbert copy to the secretary of the Chief Justice.

The following day, July 16, 2008, at around 4:00 p.m., Justice Reyes called Del Rosario to his chambers and instructed him to retrieve the Gilbert copy, *etc*. from the OCJ, informing him **for the first time** that the promulgation of the *ponencia* had been put on hold. Around that same time, the OCJ phoned the Office of Justice Reyes and told them to retrieve the *ponencia* for the same reason.

Thus, Del Rosario went to the OCJ and asked for the return of the Gilbert copy. As Gatdula had already forwarded the same to the Chief Justice's secretary for the Chief Justice's signature, Gatdula retrieved it from the secretary. Del Rosario retrieved all that he submitted the previous day, except the *rollo* which had, in the meantime, been borrowed by Justice Carpio.

Del Rosario then brought the Gilbert copy to Justice Reyes who told him to keep it. Del Rosario informed Atty. Evangelista the following day, July 17, 2008, that the promulgation of the Gilbert copy was on hold. After Atty. Evangelista verified the matter from Justice Reyes, he (Atty. Evangelista) told Del Rosario that the case would be called again on July 29, 2008. Del Rosario made a note in his logbook to that effect.

On July 25, 2008, the Office of Justice Reyes received the *En Banc* agenda for July 29, 2008 where the *Limkaichong* case was listed as Item No. 66. A new cover page reflecting the case as Item No. 66 was thus prepared and attached to the Gilbert copy bearing only 14 signatures.

After the Gilbert copy was retrieved from the OCJ on July 16, 2008, it remained in the sole custody of Del Rosario until December 15, 2008, the initial hearing conducted by the investigating committee. The Gilbert copy remained inside his unlocked drawer, in a brown envelope, which he had sealed with the blue and white seal used by all Justices. He opened it only on December 10, 2008, after Justice Reyes informed his staff that there was a leak of the *ponencia*.

When news of Biraogo's conduct of a press conference on December 9, 2008 bearing on the leakage came out, Justice Reyes immediately called his legal staff and Del Rosario to a meeting and asked them if they knew anything about the leakage. He called for a second meeting among Atty. Evangelista, Manabat and Del Rosario on December 15, 2008, before the hearing by the investigating committee took place in the afternoon of that day. Justice Reyes likewise had a one-on-one talk with Del Rosario and asked him if a

copy of Justice Carpio's *Reflections* was attached to the Gilbert copy and related documents when they were sent to the OCJ, to which he (Del Rosario) answered in the negative.

EVALUATION

The committee finds that **the photocopying of the Gilbert copy occurred *between* July 15, 2008, before it was brought to the OCJ or after it was retrieved on July 16, 2008 from the OCJ**, *and* **July 25, 2008**, when the Office of Justice Reyes caused the preparation of the new cover page of the Gilbert copy to reflect that it was agendaed as Item No. 66 in the July 29, 2008 *En Banc* session, **because the cover page of the photocopy in the possession of Biraogo, as well as the cover page of Justice Reyes's new copy, still bore the agenda date "July 15, 2008" and Item No. 52.**

The committee likewise finds that the leakage was intentionally done. It was not the result of a copy being misplaced and inadvertently picked up by Biraogo or someone in his behalf. The committee notes that none of the offices to which the Gilbert copy was brought (OCJ and the Office of Justice Nachura) and which acquired control over it photocopied *ponencias* in Gilbert form and released photocopies thereof to party litigants. In any event, as earlier reflected, **page 1 of the Gilbert copy that was sent to the OCJ and Justice Nachura's Office and page 1 of Biraogo's photocopy differ.**

To reiterate, the Gilbert copy bearing the signatures of 14 Justices was photocopied and that a copy thereof was intentionally leaked directly or indirectly to Biraogo. As will be discussed below, **the committee FINDS that the leak came from the Office of Justice Reyes.**

It bears reiterating that the leak did not come from the OCJ even if the Gilbert copy stayed therein from 3:30 p.m. on July 15, 2008 up to 4:00 p.m. on July 16, 2008. This is clear from the fact that page 1 of the copy in Biraogo's possession **differs** from page 1 of the Gilbert copy which was forwarded to the OCJ. Thus, on page 1 of the Gilbert copy which contains the names of the Justices of the Court, there appear asterisks after the names of Justice Adolfo S. Azcuna and Justice Dante O. Tinga. These asterisks have corresponding footnotes stating that Justice Azcuna was on official leave per Special Order No. 510 dated July 15, 2008 and Justice Tinga was likewise on official leave per Special Order No. 512 dated July 16, 2008. **In contrast**, page 1 of Biraogo's copy **and** Justice Reyes's new copy, glaringly contain no such asterisks and footnotes, which indicates that page

1 of Biraogo's copy was photocopied from page 1 of the draft prepared by Justice Reyes before it was finalized on Gilbert paper.

The leak also could not have come from the offices of the other associate justices, contrary to Justice Reyes's insinuation. Justice Reyes insinuated that because all the Justices were furnished with advance copies of the draft *ponencia* before the session of July 15, 2008, anyone from those offices could have leaked the decision. **An examination of the copy in Biraogo's possession readily shows that every page thereof – pages 1 to 36 – contained Justice Reyes's authenticating initials while none of the advance copies furnished to the Justices was similarly authenticated.**

Advance copies of a draft given to the justices as a working basis for deliberations are not initialed by the justice who prepares it. And they do not contain the signature of any of the Justices, except the one who prepared the draft, precisely because the Justices have yet to go over it and deliberate on it. As standard procedure, it is only after a draft decision has been adopted by the Court that it is finalized-printed on Gilbert paper and every page thereof is authenticated by the *ponente*, and circulated for signature by the other Justices.

It need not be underlined that there was no opportunity for anyone from the offices of the Associate Justices to photocopy the *ponencia* as none of said offices acquired possession of the document, except the Office of Justice Reyes and the Office of Justice Nachura. But based on testimony, the unpromulgated *ponencia* stayed in the Office of Justice Nachura only for less than five minutes, which did not suffice for it to be signed by Justice Nachura and to be photocopied. **Again, and in any event, page 1 of the photocopy in Biraogo's possession does not match the same page of the Gilbert copy.**

Furthermore, except for Justice Reyes, the Associate Justices took hold of the Gilbert copy only briefly when they signed it at the *En Banc* conference room. At no other time did any of them hold the document long enough to photocopy it. Pursuant to standard procedure, only the *ponente*, Justice Reyes in this case, and his staff, took custody of the *ponencia* bearing the signatures of 14 Justices before it was sent to the OCJ.

But who from the Office of Justice Reyes leaked the unpromulgated *ponencia*? While the evidence shows that the chain of custody could not rule out the possibility that the Gilbert copy was photocopied by Del Rosario who had control and possession of it, and while there

is no direct evidence as to the identity of the perpetrator of the leakage, **the committee FINDS that based on the circumstantial evidence reflected above, particularly the evident undue interest of Justice Reyes to circulate a draft *ponencia* of the case soonest even *before* the memoranda of all the parties fell due, and to withhold the information to Atty. Evangelista and Del Rosario that the promulgation of the *ponencia* was put on hold and, instead, allow the immediate promulgation after lunch *despite* his admission that the decision to hold the promulgation was arrived at at lunchtime, it was Justice Reyes himself who leaked a photocopy thereof.**

Recall that the Court gave due course to the petition on April 8, 2008 and the first memorandum was filed by the Office of the Solicitor General only on June 16, 2008. The other parties, namely, Olivia Paras, Speaker Nograles, *et al.*, and Biraogo subsequently filed their respective memoranda only on July 1, 2, and 24, 2008. Even before the *En Banc* session of June 10, 2008, however, Justice Reyes had already circulated a draft decision.

Further, still later or on June 12, 2008, Justice Reyes circulated, via transmittal letter of even date printed on his memo pad and signed by him, a Revised Draft, **copy of which transmittal letter, as well as the Revised Draft, also came into the possession of Biraogo** (Annex "B" to Biraogo's Compliance).

Furthermore, even after the Justices had, at lunchtime of July 15, 2008, unanimously decided that the promulgation of the Gilbert copy would be put on hold—and this was, it bears repeating, admitted by Justice Reyes—, Justice Reyes, after partaking lunch at the dining room and before 1:00 p.m., instead of advising his Chief of Staff Atty. Evangelista and Del Rosario that the promulgation was put on hold**, still instructed them to reprint the second signature page (page 36) and to have the reprinted page immediately brought to the Office of Justice Nachura for signature; and before Justice Reyes left for the session hall for the oral arguments of that case scheduled at 1:30 p.m. that day, Justice Reyes still followed up the case by asking Manabat if Justice Nachura had already signed the Gilbert copy**.[245]

When confronted with the incontrovertible evidence of his undue interest in the case and haste in having the Gilbert copy promulgated, Justice Reyes was notably evasive. On January 16, 2009, Justice

[245] TSN, January 21, 2009, pp. 43-45, 47.

Carpio Morales asked Justice Reyes if he would admit that he prepared a draft of the decision even before the first memorandum was submitted on June 16, 2008. Justice Reyes stated that he could not admit that fact.[246] **Such fact is documented**, however, and it would not have escaped him as the records of the Limkaichong case were with him and yet he already prepared and caused the circulation of a draft of the decision on June 12, 2008.

Justice Reyes also gave conflicting accounts on when he gave the Gilbert copy to Del Rosario after the *En Banc* session of July 15, 2008 was adjourned. During the proceedings of the committee on December 15, 2008, Justice Reyes categorically stated that pursuant to standard operating procedures, he gave the signed Gilbert copy to Del Rosario after the Chief Justice noted that seven Justices had concurred "in the result."[247] It bears recalling that the Chief Justice confirmed noting **such fact during lunchtime.** However, the following day, during the December 16, 2008 proceedings, Justice Reyes implied that pursuant to standard operating procedures, his staff got his folders including the Gilbert copy right after the *En Banc* session. Hence, so he reasoned, as the agreement to put on hold the promulgation of the Gilbert copy and to hold oral arguments on the case was arrived at only after lunch which followed the adjournment of the *En Banc* session, his staff did not know about such agreement.[248] But **even Del Rosario, whose testimony he credits more than any of the other members of his staff, categorically stated that Justice Reyes gave him the Gilbert copy after he (Justice Reyes) had taken his lunch and while he (Del Rosario), Justice Reyes and Atty. Evangelista were, before 1:00 p.m., on their way to Justice Reyes's office**, and that, **at that instant, Justice Reyes instructed Atty. Evangelista to have the signature page 36 reprinted and have Justice Nachura** (who was not participating in the oral arguments scheduled that afternoon) **sign**.

During the January 22, 2009 hearing, when asked to explain why the top cover of the new copy which he brought with him and which he claimed to have been photocopied from the committee's copy, did not match the top cover of the committee's copy (or the original Gilbert copy) but matched the top cover of Biraogo's copy, Justice Reyes **offered**

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[246] TSN, January 16, 2009 AM Session, pp. 95-97.

[247] TSN, December 15, 2008, pp. 14, 16-17.

[248] TSN, December 16, 2008, pp. 8-9.

no explanation. Neither did he account for the other dissimilarities between page 1 of his new copy and the same page 1 of Biraogo on one hand, and page 1 of the Gilbert copy , *viz*: page 1 of the new copy, like page 1 of Biraogo's copy, **does not have asterisks after the names of Justices Tinga and Azcuna and the corresponding footnotes, which the Gilbert copy has**.

Justice Reyes, despite his professed desire to bring out the truth, **refused** to submit his new copy to the committee and questioned the committee's request that he place his initials on the questioned pages of his new copy. Later, while the committee was discussing other points in his Notes, Justice Reyes tried to hide his new copy. Justice Corona had to pry it out of Justice Reyes's files. As Justice Reyes repeatedly said that he was not submitting his new copy to the committee ("Why should I"), the committee members were prompted to photocopy his new copy, but only after they affixed their signatures and date (January 22, 2009) on the first 5 pages thereof.

To the members of the committee, the foregoing proven facts and circumstances constitute **more than substantial evidence which reasonably points to Justice Reyes, despite his protestations of innocence,**[249] **as THE source of the leak.** He must, therefore, be held liable for **GRAVE MISCONDUCT.**

Effect of Justice Reyes's Retirement

The subsequent retirement of a judge or any judicial officer from the service does not preclude the finding of any administrative liability to which he is answerable.[250]

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite Justice Reyes's retirement.

Even if the most severe of administrative sanctions may no longer be imposed, there are other penalties which may be imposed if one

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[249] TSN, January 22, 2009, p. 151.

[250] *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 4, Dolores, Eastern Samar*, A.M. No. 06-6-340-RTC, October 17, 2007, 536 SCRA 313, 339 citing *Concerned Trial Lawyers of Manila v. Veneracion*, A.M. No. RTJ-05-1920, April 26, 2006, 488 SCRA 285, 298-299.

is later found guilty of the administrative offenses charged, including the **disqualification to hold any government office** and the **forfeiture of benefits**.[251]

The Court retains jurisdiction either to pronounce a respondent official innocent of the charges or declare him/her guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications. For, what remedy would the people have against a civil servant who resorts to wrongful and illegal conduct during his/her last days in office? What would prevent a corrupt and unscrupulous government employee from committing abuses and other condemnable acts knowing fully well that he/she would soon be beyond the pale of the law and immune from all administrative penalties?

If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts **performed in office** which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, a respondent official merits vindication of his/her name and integrity as he leaves the government which he/she served well and faithfully; if guilty, he/she deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[252]

The Court cannot over-emphasize the importance of the task of preserving the confidentiality and integrity of court records. A number of rules and internal procedures are in place to ensure the observance of this task by court personnel.

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[251] *Pagano v. Nazarro, Jr.*, G.R. No. 149072, September 21, 2007, 533 SCRA 622, 628, see the discussion where the Court debunked the cases relied upon by petitioner to support her defense that government employees who have been separated can no longer be administratively charged.

[252] *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 729 citing *Perez v. Abiera*, Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302, 307; *vide Gallo v. Judge Cordero*, 315 Phil. 210, 220 (1995).

The New Code of Judicial Conduct[253] provides that confidential information acquired by justices and judges in their judicial capacity shall not be used or disclosed for any other purpose not related to their judicial duties.[254] The Code of Conduct for Court Personnel likewise devotes one whole canon on confidentiality, to wit:

> SECTION 1. Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary, whether such information came from authorized or unauthorized sources.
>
> **Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers.**
>
> **The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public.**
>
> SEC. 2. Confidential information available to specific individuals by reason of statute, court rule or administrative policy shall be disclosed only by persons authorized to do so.
>
> SEC. 3. Unless expressly authorized by the designated authority, court personnel shall not disclose confidential information given by litigants, witnesses or attorneys to justices, judges or any other person.
>
> SEC. 4. Former court personnel shall not disclose confidential information acquired by them during their employment in the Judiciary when disclosed by current court personnel of the same

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[253] A.M. No. 03-05-01-SC entitled ADOPTING THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY (April 27, 2004).

[254] *Supra* note 18 at Canon 4 (Propriety), Sec. 9 as amended by Resolution of June 6, 2006.

information would constitute a breach of confidentiality. Any disclosure in violation of this provisions shall constitute indirect contempt of court.[255] (Emphasis and underscoring supplied.)

Ineluctably, any release of a copy to the public, or to the parties, of an unpromulgated *ponencia* infringes on the confidential internal deliberations of the Court. It is settled that the internal deliberations of the Court are confidential.[256] A frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise judicial power.[257]

In *Mirasol v. De La Torre, Jr.*,[258] the Court stated that "[c]ourt documents are confidential documents. They must not be taken out of the court without proper authority and without the necessary safeguards to ensure their confidentiality and integrity." Thus, the Court found the clerk of court guilty of gross misconduct. Moreover, the case enunciates that acts of gross misconduct destroy the good image of the judiciary so the Court cannot countenance them nor allow the perpetrators to remain in office. This same pronouncement was reiterated in *Betguen v. Masangcay*.[259] Though both cases involve indiscretions of clerks of court, it is but logical that a higher standard of care be imposed upon magistrates of the Court.

PAGCOR v. Rilloza,[260] in fact, commands persons who routinely handle confidential matters to be confidential employees. They are thus expected to be more careful than an ordinary employee in their day to day business. They are reposed such trust and confidence

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[255] A.M. No. 03-06-13-SC (April 13, 2004), Canon II. The Code shall apply to all personnel in the judiciary who are **not justices or judges**, including former court personnel who acquired, while still so employed, confidential information, who are thereby made subject to Section 4 of Canon II.

[256] *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, December 9, 1998, 299 SCRA 744.

[257] *Chavez v. Public Estates Authority*, G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[258] Adm. Matter No. P-88-238, April 8, 1991, 195 SCRA 667.

[259] A.C. No. P-93-822, December 1, 1994, 238 SCRA 475.

[260] G.R. No. 141141, June 25, 2001, 359 SCRA 525.

that a breach of their duty would mean breach of trust. **As applied to the case of Justice Reyes, the breach of duty amounts to breach of public trust as the committee believes that the leak was motivated by self-interest.**

The fact that Justice Reyes was not formally charged is of no moment. It is settled that **under the doctrine of *res ipsa loquitur*, the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law or misconduct.**[261]

In *People v. Valenzuela*,[262] which deals with the administrative aspect of a case brought on *certiorari*, the Court dispensed with the conduct of further hearings under the principle of *res ipsa loquitur* and proceeded to consider critical factors in deducing malice and bad faith on the part of the judge, after it did not accept at face value the judge's mere denial. In that case, the judge ordered the return of the peso equivalent of the foreign currency to the accused despite its forfeiture as dutiable goods and even after the finding that the accused had nothing to do with the mailing thereof.

In *Cathay Pacific Airways, Ltd. v. Romillo, Jr.*,[263] where the Court took into account glaring circumstances in the proceedings of the case in concluding that the judge acted with bad faith, the judge was similarly found guilty of grave and serious misconduct when he unjustly declared the defendant in default and awarded outrageously exorbitant damages.

Prudential Bank v. Castro[264] was an administrative case spawned by a party's complaint, wherein the Court, in light of the surrounding circumstances, found that the judge committed serious and grave misfeasance because the issuance of the orders and ill-conceived summary judgment showed the judge's partiality to, or confabulation with the plaintiff and its lawyers.

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[261] *De los Santos v. Mangino*, A.M. No. MTJ-03-1496, July 10, 2003, 405 SCRA 521, 528; *Cruz v. Yaneza*, A.M. No. MTJ-99-1175, March 9, 1999, 304 SCRA 285, 305, both citing *Macalintal v. Teh*, A.M. No. RTJ-97-1375, October 16, 1997, 280 SCRA 623, 625.

[262] Nos. 63950-60, April 19, 1985, 135 SCRA 712.

[263] No. 64276, June 10, 1986, 142 SCRA 262.

[264] A.C. No. 2756, June 5, 1986, 142 SCRA 223.

In *Consolidated Bank and Trust Corporation v. Capistrano*,[265] the Court proceeded in adjudging the attendant circumstances as tainted with bad faith and questionable integrity to call for the exercise of the Court's disciplinary powers over members of the judiciary. In that case, the Court found the submissions of the judge unacceptable and clearly inadequate to overcome the cumulative effect of the highly questionable actuations– taking cognizance of a claim for damages arising from an attachment, instead of having it litigated in the same action where the writ was issued – as evincing gross ignorance of the law and active bias or partiality.

The Court, in *Cruz v. Yaneza*,[266] perceived the judge's persistent pattern of approving bail bonds and issuing release orders beyond its territorial jurisdiction as evincing a *modus operandi* that flagrantly flaunts fundamental rules.

In *De Los Santos v. Magsino*,[267] the Court again applied the doctrine of *res ipsa loquitur* when a judge irregularly approved a bail bond and issued a release order of an accused whose case was pending in another province, in palpable disregard and gross ignorance of the procedural law on bail.

The principle was also applied to discipline court personnel and suspend members of the Bar from the practice of law.

The Court, in *Office of the Court Administrator v. Pardo*,[268] found the clerk of court guilty of gross discourtesy in the course of official duties when he failed to accord respect for the person and rights of a judge as can be gleaned from a mere reading of his letter to the Executive Judge.

In *Sy v. Moncupa*,[269] the Court found the evidence against the clerk for malversation of public funds eloquently speaks of her criminal misdeed to justify the application of the doctrine of *res ipsa loquitur*. The clerk admitted the shortage in the court funds in her custody and pleaded for time to pay the amount she had failed to account for.

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[265] A.M. No. R-66-RTJ, March 18, 1988, 159 SCRA 47.

[266] *Supra* note 274, at 285.

[267] *Supra* note 274, at 521.

[268] A.M. No. RTJ-08-2109, April 30, 2008.

[269] A.M. No. P-94-1110, February 6, 1997, 267 SCRA 517.

In maintaining an earlier Resolution,[270] the Court, in *In re Wenceslao Laureta*,[271] also declared that nothing more was needed to be said or proven and the necessity to conduct any further evidentiary hearing was obviated. In that case, the Court found that the letters and charges leveled against the Justices were, of themselves and by themselves, malicious and contemptuous, and undermined the independence of the judiciary.

Meanwhile, in *Emiliano Court Townhouses Homeowners Association v. Dioneda*,[272] it was held that it was reasonable to conclude that under the doctrine of *res ipsa loquitur*, the respondent committed an infringement of ethical standards by his act of receiving money as acceptance fee for legal services in a case and subsequently failing to render such service. The Court found the respondent liable for disloyalty to his client and inexcusable negligence in legal matters entrusted to him.

The Court, in *Dizon*, clarified the doctrine *of res ipsa loquitur, viz:*

> In these *res ipsa loquitur* resolutions, there was on the face of the assailed decisions, an inexplicable grave error bereft of any redeeming feature, a patent railroading of a case to bring about an unjust decision, or a manifestly deliberate intent to wreak an injustice against a hapless party. The facts themselves, previously proven or admitted, were of such a character as to give rise to a **strong inference** that evil intent was present. Such intent, in short, was clearly deducible from what was already of record. The *res ipsa loquitur* doctrine does not except or dispense with the necessity of proving the facts on which the inference of evil intent is based. It merely expresses the clearly sound and reasonable conclusion that when such facts are admitted or are already shown by the record, and no credible explanation that would negative the strong inference of evil intent is forthcoming, no further hearing

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[270] No. 68635, March 12, 1987, 148 SCRA 382.

[271] No. 68635, May 14, 1987, 149 SCRA 570. Eva Maravilla-Ilustre was held in contempt of court and was ordered to pay a fine of ₱1,000 within ten days from notice, or suffer imprisonment for ten days upon failure to pay said fine within the given period. Atty. Wenceslao Laureta was found guilty of grave professional misconduct and was suspended from the practice of law until further orders.

[272] A.C. No. 5162, March 20, 2003, 399 SCRA 296.

to establish them to support a judgment as to the culpability of a respondent is necessary.[273] (Underscoring and emphasis supplied.)

The apparent toning down of the application of the *res ipsa loquitur* rule was further amplified in at least two cases. In *Louis Vuitton S.A. v. Villanueva*,[274] the Court ruled that the doctrine of *res ipsa loquitur* does not apply to cases of knowingly rendering a manifestly unjust judgment, and even if the doctrine is appreciable, complainant still has to present proof of malice or bad faith.

Then came *Fernandez v. Verzola*,[275] where it was held that failure to substantiate a claim of corruption and bribery and mere reliance on conjectures and suppositions cannot sustain an administrative complaint. In dismissing the complaint, the Court rejected as untenable the reasoning that the decision itself is evidence of corruption per doctrine of *res ipsa loquitur*. It upheld the rule that rendering an erroneous or baseless judgment, in itself, is not sufficient to justify the judge's dismissal from the service.

The supposed tempering of the principle of *res ipsa loquitur* in *Dizon* only bolstered and solidified the application of the doctrine in cases not only of gross negligence but of serious misconduct as well, since it speaks of "**inference of evil intent**."

As explained in *Louis Vuitton*, the familiar rule in administrative cases is that **the acts of a judge in his judicial capacity are not subject to disciplinary action, and that he cannot be subjected to civil, criminal or administrative liability for any of his official acts, no matter how erroneous, as long as he acts in good faith.** The rule adds that the proper remedy is via judicial recourse and not through an administrative action.

It must be pointed out that *Louis Vuitton* involves gross ignorance of the law and/or knowingly rendering an unjust judgment. In cases of leakage or breach of confidentiality, however, the familiar rule obviously does not apply. While the injured party is the Court itself,

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[273] *In Re: Petition for the Dismissal from Service and/or Disbarment of Judge Baltazar R. Dizon*, A.C. No. 3086, May 31, 1989, 173 SCRA 719, 725 which granted the motion for reconsideration of the Resolution in *Padilla v. Dizon*, A.C. No. 3086, February 23, 1988, 158 SCRA 127.

[274] A.C. No. MTJ-92-643, November 27, 1992, 216 SCRA 121.

[275] A.M. No. CA-04-40, August 13, 2004, 436 SCRA 369.

there is no judicial remedy available to undo the disclosure. Moreover, the premature disclosure does not spring from the four corners of the assailed decision or resolution nor can it gleaned on the face of the issuance itself. Indeed, one need not dwell on the substance of the decision since that in itself is inherently insufficient. In unearthing the misdeed, it becomes not only desirable but also necessary to trace the attendant circumstances, apparent pattern and critical factors surrounding the entire scenario.

In *Macalintal v. Teh*,[276] the Court pronounced:

> When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both instances, the judge's dismissal is in order. After all, faith in the administration of justice exists only if every party-litigant is assured that occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles.[277] (Underscoring supplied.)

The same norm equally applies in the breach of the basic and essential rule of confidentiality that, as described in one case, "[a]ll conclusions and judgments of the Court, be they e*n banc* or by Division, are arrived at only after deliberation [and c]ourt personnel are not in a position to know the voting in any case because all deliberations are held behind closed doors without any one of them being present.[278]

As *Dizon* declared, the doctrine of *res ipsa loquitur* does not dispense with the necessity of proving the facts on which the inference of evil intent is based. It merely expresses that absent a credible explanation, it is clearly sound and reasonable to conclude a strong inference of evil intent on the basis of facts duly admitted or shown by the record.

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[276] *Supra* note 274, at 623. The Court observed that the respondent's gross deviation from the acceptable norm for judges is clearly manifest, when he actively participated in the *certiorari* proceedings in which he was merely a nominal party and when he acted both as a party litigant and as a judge before his own court.

[277] *Id.* at 631.

[278] *In re: Wenceslao Laureta*, *supra* note 284, at 579.

In fine, jurisprudence allows the reception of circumstantial evidence to prove not only gross negligence but also serious misconduct.

Justice Reyes is Likewise Liable for Violating his Lawyer's Oath and the Code of Professional Responsibility

For leaking a confidential internal document of the *En Banc*, the committee likewise finds Justice Reyes administratively liable for **GROSS MISCONDUCT** for violating his lawyer's oath and the Code of Professional Responsibility, for which he may be disbarred or suspended per Section 27,[279] Rule 138 of the Rules of Court. Canon 1 of the Code of Professional Responsibility requires a lawyer to uphold the Constitution, obey the laws of the land and promote respect for law and legal processes. It is likewise provided in Rule 1.01 and 1.02 of the said canon that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct and that a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system. Here, the act of Justice Reyes not only violated the New Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics, it also infringed on the internal deliberations of the Court and impeded and degraded the administration of justice. The act is rendered all the more pernicious considering that it was committed by no less than a justice of the Supreme Court who was supposed to serve as example to the bench and bar.

That Justice Reyes was an impeachable officer when the investigation started is of no moment. The rule prohibiting the institution of disbarment proceedings against an impeachable officer who is required by the Constitution to be a member of the bar as a qualification in office applies only during his or her tenure and does

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[279] Sec. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

not create immunity from liability for possibly criminal acts or for alleged violations of the Code of Judicial Conduct or other supposed violations.[280] Once the said impeachable officer is no longer in office because of his removal, resignation, retirement or permanent disability, the Court may proceed against him or her and impose the corresponding sanctions for misconduct committed during his tenure, pursuant to the Court's power of administrative supervision over members of the bar. **Provided that the requirements of due process are met**, the Court may penalize retired members of the Judiciary for misconduct committed during their incumbency. Thus, in *Cañada v. Suerte*,[281] this Court ordered the disbarment of a retired judge for misconduct committed during his incumbency as a judge.

However, pernicious as Justice Reyes's infractions may have been, the committee finds the imposition of the supreme penalty of disbarment unwarranted. In the determination of the imposable disciplinary sanction against an erring lawyer, the Court takes into account the primary purpose of disciplinary proceedings, which is to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable men in whom courts and clients may repose confidence. While the assessment of what sanction may be imposed is primarily addressed to the Court's sound discretion, the sanction should neither be arbitrary or despotic, nor motivated by personal animosity or prejudice. Rather, it should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar. Thus, the supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. Under the circumstances of this case, the committee finds the penalty of indefinite suspension from the practice of law sufficient and proper.

Liability of Atty. Rosendo B. Evangelista

The Committee finds that Atty. Evangelista, Justice Reyes' Judicial Staff Head, was remiss in his duties, which includes the supervision of the operations of the office, particularly with respect to the promulgation of decisions. While it is incumbent upon him to devise ways and means

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[280] *In Re: Raul M. Gonzalez*, A.M. No. 88-4-5433, April 15, 1988, 160 SCRA 771, 774.

[281] A.M. No. RTJ-04-1884, February 22, 2008.

to secure the integrity of confidential documents, his actuations reflected above evinced "a disregard of a duty resulting from carelessness or indifference."[282]

Atty. Evangelista was admittedly unmindful of the responsible safekeeping of draft *ponencias* in an unlocked drawer of a member of the staff. He failed to make sure that the unused portion of confidential documents like the second signatory page of the *ponencia* in Gilbert form had been properly disposed of or shredded. He was not on top of things that concerned the promulgation of *ponencias*, for he failed to ascertain the status and procedural implication of an "on hold" order after having been apprised thereof by his subordinate, Del Rosario, on July 17, 2008. Despite his awareness that the *Limkaichong* case would eventually be called again, he admitted that he was not privy to the preparation of the copy of the *ponencia* for the subsequent session on July 29, 2008.

With these findings, the Court finds him **liable for SIMPLE NEGLECT OF DUTY**.

Liability of Armando Del Rosario

The committee likewise finds Del Rosario administratively liable for failing to exercise the required degree of care in the custody of the Gilbert copy. Del Rosario admittedly kept the Gilbert copy in an unlocked drawer from July 16, 2008 to December 10, 2008 when he should have known that, by the nature of the document in his custody, he should have kept it more securely. His carelessness renders him administratively **liable for SIMPLE NEGLECT OF DUTY**, defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[283]

Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to carry. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the people's faith in the judiciary.

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[282] *De Leon-Dela Cruz v. Recacho*, A.M. No. P-06-2122, July 17, 2007, 527 SCRA 622, 631.

[283] *Rivera v. Buena*, A.M. No. P-07-2394, February 19, 2008.

Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative.[284] Following the Court's ruling in several cases involving (simple) neglect of duty,[285] we find the penalty of fine on Atty. Evangelista and Del Rosario in the amount of ₱10,000 and ₱5,000, respectively, just and reasonable.

RECOMMENDATIONS

IN VIEW OF THE FOREGOING, the Investigating Committee respectfully recommends that

(1) Justice Ruben T. Reyes (Ret.) be found liable for **GROSS MISCONDUCT** for violating his oath as a member of the Bar and the Code of Professional Responsibility and be meted the penalty of **INDEFINITE SUSPENSION** as a member of the Bar;

(2) Justice Ruben T. Reyes (Ret.) also be found liable for **GRAVE MISCONDUCT** for leaking a confidential internal document of the Court and be FINED in the amount of ₱500,000, to be charged against his retirement benefits; and

(3) Atty. Rosendo B. Evangelista and Armando Del Rosario be held liable for **SIMPLE NEGLECT OF DUTY** and be **FINED** in the amount of ₱10,000 and ₱5,000, respectively.

RESPECTFULLY SUBMITTED.

(Sgd.)
LEONARDO A. QUISUMBING
Chairman

(Sgd.)	**(Sgd.)**
RENATO C. CORONA	**CONCHITA CARPIO MORALES**
Member	Member

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[284] *Patawaran v. Nepomuceno,* A.M. No. P-02-1655, February 6, 2007, 514 SCRA 265, 278.

[285] *Judge Balanag, Jr. v. Osita,* 437 Phil. 452 (2002)*; Casano v. Magat,* 425 Phil. 356 (2002)*; Tiongco v. Molina,* 416 Phil. 676 (2001)*; Beso v. Judge Daguman,* 380 Phil. 544 (2000).

The Court finds the above-quoted report well taken. Pursuant to Section 13, Article VIII of the Constitution, this *per curiam* decision was reached after deliberation of the Court *En Banc* by a unanimous decision of all the members of the Court except for two (2) Justices who are on official leave.

WHEREFORE, in view of the foregoing, the Court *ADOPTS* the findings and *APPROVES WITH MODIFICATION* the Recommendations of the Investigating Committee as follows:

(1) Justice Ruben T. Reyes (Ret.) is held liable for *GRAVE MISCONDUCT* for leaking a confidential internal document of the Court and he is *FINED* **₱500,000.00**, to be charged against his retirement benefits, and disqualified to hold any office or employment in any branch or instrumentality of the government including government-owned or controlled corporations; furthermore, Justice Ruben T. Reyes is directed to *SHOW CAUSE* within ten (10) days from receipt of a copy of this Decision why he should not be disciplined as a member of the Bar in light of the aforementioned findings.

(2) Atty. Rosendo B. Evangelista and Armando Del Rosario are held liable for *SIMPLE NEGLECT OF DUTY* and are ordered to pay the *FINE* in the amount of *₱10,000.00* and *₱5,000.00*, respectively.

This Decision shall take effect immediately.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago and *Tinga, JJ.,* on official leave.

FIRST DIVISION

[A.M. No. MTJ-09-1733. February 24, 2009]

MA. THERESA G. WINTERNITZ and RAQUEL L. GONZALEZ, *complainants, vs.* **JUDGE LIZABETH GUTIERREZ-TORRES,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; SHOULD DISPOSE OF THE COURT'S BUSINESS PROMPTLY AND DECIDE CASES WITHIN THE PRESCRIBED PERIODS. — Rule 3.05, Canon 3 of the Code of Judicial Conduct provid[es] that a judge shall dispose of the court's business promptly and decide cases within the prescribed periods. This Canon is in consonance with the Constitutional mandate that all lower courts decide or resolve cases or matters within three (3) months from their date of submission. Accordingly, Rule 1.02 of Canon 1 and Rule 3.05 of Canon 3 provide as follows: Rule 1.02. A judge should administer justice impartially and without delay. Rule 3.05. A judge should dispose of the court's business promptly and decide cases within the required periods. In line with the foregoing, the Court has laid down administrative guidelines to ensure that the mandates on the prompt disposition of judicial business are complied with. Thus, SC Administrative Circular No. 13-87 states, in pertinent part: 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x. Furthermore, SC Administrative Circular No. 1-88 dated January 26, 1988 states: 6.1. All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it to disrepute.

2. ID.; ID.; MUST EXHIBIT RESPECT FOR AUTHORITY; CASE AT BAR. — [R]espondent judge submitted her comment on the instant complaint only after more than two (2) years from the time the OCA required her to do so. Her prolonged and repeated refusal to comply with the simple directives of the OCA to file her comment constitutes a clear and willful disrespect for lawful orders of the OCA. It bears stress that it is through the OCA that the Supreme Court exercises supervision over all lower courts and personnel thereof. At the core of a judge's esteemed position is obedience to the dictates of the law and justice. A judge must be the first to exhibit respect for authority. Judge Torres failed in this aspect when she repeatedly ignored the directives of the OCA to file her comment.

3. ID.; REVISED RULES OF COURT; LEGAL ETHICS; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; CLASSIFIED AS A LESS SERIOUS CHARGE; PENALTY. — Rule 140, as amended, of the Revised Rules of Court provides that undue delay in rendering a decision or order is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

APPEARANCES OF COUNSEL

Guevara Law Office for complainants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case stemmed from the criminal cases filed against complainants Ma. Theresa G. Winternitz and Raquel L. Gonzalez, which were raffled to the *sala* of herein respondent, Judge Lizabeth Gutierrez-Torres of the Metropolitan Trial Court of Mandaluyong City, Branch 60.

Particularly, these criminal cases were Criminal Case No. 84382 entitled, "*People v. Ma Theresa Winternitz*" for unjust vexation; Criminal Case No. 84383 entitled, "*People v. Raquel*

Gonzalez" for grave coercion; and Criminal Case No. 84384 entitled, "*People v. Ma. Theresa Winternitz, Raquel Gonzalez and Remigio Relente*" for grave slander.

According to complainants Winternitz and Gonzalez, the Department of Justice (DOJ) issued a resolution dated May 14, 2002 which directed the City Prosecutor of Mandaluyong City to cause the withdrawal of the above-mentioned criminal cases against them. On May 24, 2002, the City Prosecutor filed a Motion to Withdraw Informations pursuant to the directive of the DOJ. However, the respondent judge did not immediately act on said motion but instead set the same for hearing several times. The motion was finally submitted for its resolution on January 13, 2004. As of October 21, 2003, the motion remained unresolved despite the complainants' prayer for resolution. This prompted herein complainants to file the instant administrative complaint[1] against respondent judge for malfeasance/ misfeasance. Complainants contended that the delay or inaction of the respondent on the motion constituted a violation of Article 7, Section 15 of the 1987 Constitution and Canon 3, Rules 3.08 and 3.09 of the Code of Judicial Conduct.

In his 1st Indorsment[2] dated November 7, 2003, then Court Administrator Presbitero J. Velasco, Jr.[3] ordered respondent to file her comment within ten (10) days from receipt of the same. In her letter[4] dated January 29, 2004, respondent requested a period of twenty (20) days to collate all pertinent data and to submit a detailed comment. Respondent's request was granted by the Court Administrator in his letter[5] dated February 12, 2004. Still, respondent judge failed to file her comment within the extended period granted to her. In a letter[6] dated August

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[1] *Rollo*, pp. 1-10.

[2] *Id.* at 7.

[3] Now Associate Justice of this Court.

[4] *Rollo*, p. 8.

[5] *Id.* at 12.

[6] *Id.* at 20.

18, 2004, she again asked for a period of twenty (20) days to submit her comment which was again favorably acted upon by the Court Administrator.[7] Still unable to file her comment, another twenty (20)-day extension was prayed for by respondent which was granted by the Court Administrator on January 26, 2005.[8]

In a Resolution[9] dated September 28, 2005, the Court required respondent judge to explain her repeated failure to comment on the administrative complaints against her and to file the same within a period of ten (10) days. In her letter[10] dated November 7, 2005, respondent judge asked for an additional ten (10) days to submit her comment which the Court granted in the Resolution[11] dated January 16, 2006.

On February 20, 2006, respondent judge finally filed her comment on the three (3) administrative complaints, including the instant complaint (A.M. No. MTJ-05-1611) filed against her. The comment was attached to her Second Motion for Reconsideration dated February 15, 2006 in A.M. No. MTJ-05-1611.[12] Respondent judge explained that she was unable to immediately act on the City Prosecutor's motion to withdraw informations despite having set the same for hearing on several occasions particularly on June 10 and 24, 2002, July 24, 2002 and January 13, 2003 because there was no proof of service of the notice of hearing upon private complainant and counsel in the aforesaid criminal cases and she may be accused of partisanship. She also attributed the delay to the heavy caseload when she assumed office in 2001 and to the lack of personnel in her *sala*. She admitted culpability for her failure to submit her comment on time and asked for consideration from this Court.

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[7] *Id.* at 21.

[8] *Id.* at 31.

[9] *Id.* at 37.

[10] *Id.* at 38.

[11] *Id.* at 39.

[12] *Id.* at 40-50.

In his Memorandum[13] dated October 9, 2006, then Court Administrator Christopher Lock recommended that the matter be referred to the Executive Judge of the Regional Trial Court of Mandaluyong City for investigation, report and recommendation. However, in a letter dated March 6, 2007, Executive Judge Maria Cancino-Erum asked to be allowed to inhibit herself from investigating the case.[14] The case then was referred to Vice-Executive Judge Rizalina Capco-Umali who also requested permission to inhibit herself.[15] Consequently, the instant administrative case was referred to Associate Justice of the Court of Appeals Romeo Barza for investigation, report and recommendation.[16]

In his Report and Recommendation[17] dated March 4, 2008, Justice Barza found respondent to have been remiss in her duty to resolve the motion to withdraw the criminal cases filed against herein complainants with dispatch. The pertinent findings of Justice Barza are quoted hereunder:

> From the totality of the evidence adduced by the parties, and after a judicious evaluation and scrutiny thereof, the undersigned has come up with a finding that the respondent judge is liable for the charges thrown against her. Respondent judge failed to present convincing evidence to disprove the accusation that she is negligent in her duty to resolve the said *motion*.
>
> Rule 3.05 of the Code of Judicial Conduct provides that "*A judge shall dispose of the court's business promptly and decide cases within the required periods.*"
>
> The office of a judge exists for one solemn end – to promote the ends of justice by administering it speedily and impartially. Regrettably, the respondent judge failed in this aspect.

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[13] *Id.* at 55-57.

[14] *Id.* at 84.

[15] *Id.* at 94.

[16] *Id.* at 97-98.

[17] *Id.* at 461-474.

While from the evidence presented by the respondent judge, it is undisputed that her *sala* is burdened with a heavy case load from the time she assumed judgeship in 2001, and that such case load continues to increase in the following years, yet, these do not excuse her from performing her judicial functions with dispatch. Notably, she has failed to develop or adopt a system of court record management which is expected of her. Proper and efficient court management is as much the judge's responsibility for he is the one directly responsible for the proper discharge of his official functions.

Judicial duties extend to keeping track of each case or matter brought to her *sala* for disposition. This is one of the purposes for which monthly reports and semestral physical inventory of cases in each court are required to be conducted and reported to the Court Administrator. These reports serve to guide the court in the progress of cases pending in their *sala*. To disregard such reports would render the inventory worthless, or else we doubt the veracity of the monthly and semestral reports being submitted by the respondent judge's court. A judge ought to know the cases submitted to him for decision or resolution and is expected to keep his own record of cases so that he may act on them promptly. As a judge, she has the bounden duty to maintain proper monitoring of cases submitted for her decision or resolution.

Significantly, during the hearing of the instant case, the respondent judge offered to prove that she filed a request for extension of time to resolve the cases pending for resolution or decision in her *sala* in the year 2001. This claim though was not sufficiently proven in respondent judge's Offer/Memorandum of Exhibits.

Taking respondent judge's argument that she did not issue an Order for the 13 January 2003 setting, which purportedly submitted the *Motion to Withdraw Informations* (incident) for resolution, the fact remains – she has been remissed in her duty. Whether or not the scheduled hearing was postponed for any reason, and whatever may have transpired therein, judges are mandated to issue an order therefor. It is well to note that other than respondent judge's argument that it appears from the record that the private complainant therein was not duly notified, no satisfactory explanation was given as to the absence of a formal order from the court for the 13 January 2003 setting. The Minutes of the session held on 13 January 2003 is clear that the "incident is not submitted for resolution."

As aptly argued by the complainants and as can be easily seen from the records of the case, the private prosecutor had already filed its *Opposition and Comment (to Urgent Motion to Resolve*) as early as 4 December 2002. This renders the 10 December 2002 Order directing the private prosecutor and/or complainant to submit their written comment moot and academic. Hence, on 13 January 2003, the respondent judge should have been placed on notice that the *Motion to Withdraw Informations* was already ripe for resolution.

Respondent judge's undue inaction cannot be countenanced. Complainants' case clearly shows that the respondent judge is guilty of undue delay in rendering a decision or order.

Moreover, the fact of the late resolution of the *Motion for Inhibition* and the *Motion for Re-raffle* clearly manifests respondent judge's penchant for delaying resolution of matters brought before her. Record shows that the *Motion for Inhibition* filed on 29 July 2004, was only resolved on 30 May 2006, while the matter prayed for in the *Motion for Re-raffle* (filed on 2 March 2007) was only resolved on 22 January 2008, after the complainants filed on 27 December 2007 the *Urgent Motion to Effect Motion for Inhibition*.

An efficient court management system would have prevented this from happening, and would not have left a void in the disposition of the said cases from 13 January 2003 onwards, and consequently, as admitted by complainants' counsel Atty. Guevara, Jr., this administrative complaint would not have been filed.

It bears repeating that the public's faith and confidence in the judicial system depends, to a large extent, on the judicious and prompt disposition of cases and other matters pending before the courts. The failure of a judge to decide a case within the reglementary period constitutes gross dereliction of duty.[18]

Hence, Justice Barza recommended that respondent judge be fined in the amount of Eleven Thousand Pesos (₱11,000.00).

We agree with the findings of the Investigating Justice but modify the recommendation in regard to the penalty.

We find unmeritorious respondent judge's excuse that the reason for her delay in resolving the motion to withdraw is the

[18] *Id.* at 469-473.

lack of notice of hearing upon the parties. Firstly, she should have realized that almost one (1) year had already elapsed from the time of filing of the motion to withdraw on May 24, 2002 up to its submission for resolution on January 13, 2003. Secondly, she is duty-bound to comply with Rule 3.05, Canon 3 of the Code of Judicial Conduct providing that a judge shall dispose of the court's business promptly and decide cases within the prescribed periods. This Canon is in consonance with the Constitutional mandate that all lower courts decide or resolve cases or matters within three (3) months from their date of submission. Accordingly, Rule 1.02 of Canon 1 and Rule 3.05 of Canon 3 provide as follows:

> Rule 1.02. A judge should administer justice impartially and without delay.
>
> Rule 3.05. A judge should dispose of the court's business promptly and decide cases within the required periods.

In line with the foregoing, the Court has laid down administrative guidelines to ensure that the mandates on the prompt disposition of judicial business are complied with. Thus, SC Administrative Circular No. 13-87 states, in pertinent part:

> 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x.

Furthermore, SC Administrative Circular No. 1-88 dated January 26, 1988 states:

> 6.1. All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x

Judge Torres failed to act on the Motion to Withdraw Informations within three (3) months from the time it was submitted for resolution on January 13, 2003. This Court cannot

countenance such undue inaction on the part of respondent judge, especially now when there is an all-out effort to minimize, if not totally eradicate, the problems of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it to disrepute.[19]

The Court also takes note of the fact that respondent judge submitted her comment on the instant complaint only after more than two (2) years from the time the OCA required her to do so. Her prolonged and repeated refusal to comply with the simple directives of the OCA to file her comment constitutes a clear and willful disrespect for lawful orders of the OCA. It bears stress that it is through the OCA that the Supreme Court exercises supervision over all lower courts and personnel thereof. At the core of a judge's esteemed position is obedience to the dictates of the law and justice. A judge must be the first to exhibit respect for authority.[20] Judge Torres failed in this aspect when she repeatedly ignored the directives of the OCA to file her comment.

We hold that respondent judge is guilty of undue delay in rendering a decision or order. Rule 140, as amended, of the Revised Rules of Court provides that undue delay in rendering a decision or order is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[21]

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[19] *Bangco v. Gatdula*, A.M. No. MTJ-00-1297, March 7, 2002, 378 SCRA 534, 539.

[20] *Re: Request for the Expeditious Resolution of Case Nos. 4666 to 4669*, A.M. No. 04-6-141-MTC, September 20, 2005, 470 SCRA 198, 205.

[21] *Supra* at note 19.

It is worth mentioning that Judge Torres had been twice found guilty of undue delay in rendering a decision or order in A.M. No. MTJ-05-1611 entitled, "*Del Mundo v. Gutierrez-Torres*"[22] and in A.M. No. MTJ-06-1653 entitled, "*Gonzalez v. Torres*."[23] She was fined ₱20,000.00 in both cases with the warning that a repetition of the same will be dealt with more severely. Considering that this is her third infraction of the same nature, Judge Torres deserves a more severe sanction than the fine of ₱11,000.00 recommended by the Investigating Justice.

IN VIEW WHEREOF, respondent Judge Torres is hereby *SUSPENDED* from office without salary and other benefits for *one (1) month*, with the *STERN WARNING* that a repetition of the same act shall be dealt with more severely.

SO ORDERED.

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

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[22] September 30, 2005, 471 SCRA 152.

[23] July 30, 2007, 528 SCRA 490.

* Additional Member in lieu of Associate Justice Adolfo S. Azcuna (Ret.) as per Special Order No. 570.

FIRST DIVISION

[G.R. No. 159310. February 24, 2009]

CAMILO F. BORROMEO, *petitioner, vs.* **ANTONIETTA O. DESCALLAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL. — Well-settled is the rule that this Court is not a trier of facts. The findings of fact of the trial court are accorded great weight and respect, if not finality by this Court, subject to a number of exceptions. In the instant case, we find no reason to disturb the factual findings of the trial court. Even the appellate court did not controvert the factual findings of the trial court. They differed only in their conclusions of law.

2. CIVIL LAW; FAMILY CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE; CO-OWNERSHIP; DOES NOT EXIST BETWEEN THE PARTIES IN AN ADULTEROUS RELATIONSHIP; CASE AT BAR. — [T]he fact that the disputed properties were acquired during the couple's cohabitation also does not help respondent. The rule that co-ownership applies to a man and a woman living exclusively with each other as husband and wife without the benefit of marriage, but are otherwise capacitated to marry each other, does not apply. In the instant case, respondent was still legally married to another when she and Jambrich lived together. In such an adulterous relationship, no co-ownership exists between the parties. It is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay claim to any portion of it. Presumption of co-ownership and equal contribution do not apply.

3. ID.; LAND REGISTRATION; REGISTRATION; NOT A MODE OF ACQUIRING OWNERSHIP. — It is settled that registration is not a mode of acquiring ownership. It is only a means of confirming the fact of its existence with notice to the world at

large. Certificates of title are not a source of right. The mere possession of a title does not make one the true owner of the property. Thus, the mere fact that respondent has the titles of the disputed properties in her name does not necessarily, conclusively and absolutely make her the owner. The rule on indefeasibility of title likewise does not apply to respondent. A certificate of title implies that the title is quiet, and that it is perfect, absolute and indefeasible. However, there are well-defined exceptions to this rule, as when the transferee is not a holder in good faith and did not acquire the subject properties for a valuable consideration. This is the situation in the instant case. Respondent did not contribute a single centavo in the acquisition of the properties. She had no income of her own at that time, nor did she have any savings. She and her two sons were then fully supported by Jambrich.

4. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; PROHIBITION AGAINST ALIENS FROM ACQUIRING TITLE TO PRIVATE LANDS; EXCEPTIONS; RATIONALE; CASE AT BAR. —— Respondent argued that aliens are prohibited from acquiring private land. This is embodied in Section 7, Article XII of the 1987 Constitution, which is basically a reproduction of Section 5, Article XIII of the 1935 Constitution, and Section 14, Article XIV of the 1973 Constitution. The capacity to acquire private land is dependent on the capacity "to acquire or hold lands of the public domain." Private land may be transferred only to individuals or entities "qualified to acquire or hold lands of the public domain." Only Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos are qualified to acquire or hold lands of the public domain. Thus, as the rule now stands, the fundamental law explicitly prohibits non-Filipinos from acquiring or holding title to private lands, except only by way of legal succession or if the acquisition was made by a former natural-born citizen. Therefore, in the instant case, the transfer of land from Agro-Macro Development Corporation to Jambrich, who is an Austrian, would have been declared invalid if challenged, had not Jambrich conveyed the properties to petitioner who is a Filipino citizen. In ***United Church Board for World Ministries v. Sebastian,*** the Court reiterated the consistent ruling in a number of cases that if land is invalidly transferred to an alien who subsequently becomes

> a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid. x x x The rationale behind the Court's ruling in **United Church Board for World Ministries,** as reiterated in subsequent cases, is this – since the ban on aliens is intended to preserve the nation's land for future generations of Filipinos, that aim is achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization or those transfers made by aliens to Filipino citizens. As the property in dispute is already in the hands of a qualified person, a Filipino citizen, there would be no more public policy to be protected. The objective of the constitutional provision to keep our lands in Filipino hands has been achieved.

APPEARANCES OF COUNSEL

Florido & Largo Law Offices for petitioner.
Gilberto Alfafara for respondent.

D E C I S I O N

PUNO, *C.J.*:

What are the rights of an alien (and his successor-in-interest) who acquired real properties in the country as against his former Filipina girlfriend in whose sole name the properties were registered under the Torrens system?

The facts are as follows:

Wilhelm Jambrich, an Austrian, arrived in the Philippines in 1983 after he was assigned by his employer, Simmering-Graz Panker A.G., an Austrian company, to work at a project in Mindoro. In 1984, he transferred to Cebu and worked at the Naga II Project of the National Power Corporation. There, he met respondent Antonietta Opalla-Descallar, a separated mother of two boys who was working as a waitress at St. Moritz Hotel. Jambrich befriended respondent and asked her to tutor him in English. In dire need of additional income to support her children,

respondent agreed. The tutorials were held in Antonietta's residence at a squatters' area in Gorordo Avenue.

Jambrich and respondent fell in love and decided to live together in a rented house in Hernan Cortes, Mandaue City. Later, they transferred to their own house and lots at Agro-Macro Subdivision, Cabancalan, Mandaue City. In the Contracts to Sell dated November 18, 1985[1] and March 10, 1986[2] covering the properties, Jambrich and respondent were referred to as the buyers. A Deed of Absolute Sale dated November 16, 1987[3] was likewise issued in their favor. However, when the Deed of Absolute Sale was presented for registration before the Register of Deeds, registration was refused on the ground that Jambrich was an alien and could not acquire alienable lands of the public domain. Consequently, Jambrich's name was erased from the document. But it could be noted that his signature remained on the left hand margin of page 1, beside respondent's signature as buyer on page 3, and at the bottom of page 4 which is the last page. Transfer Certificate of Title (TCT) Nos. 24790, 24791 and 24792 over the properties were issued in respondent's name alone.

Jambrich also formally adopted respondent's two sons in Sp. Proc. No. 39-MAN,[4] and per Decision of the Regional Trial Court of Mandaue City dated May 5, 1988.[5]

However, the idyll lasted only until April 1991. By then, respondent found a new boyfriend while Jambrich began to live with another woman in Danao City. Jambrich supported respondent's sons for only two months after the break up.

Jambrich met petitioner Camilo F. Borromeo sometime in 1986. Petitioner was engaged in the real estate business. He

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[1] Exhibit "I", Original Records, p. 104.

[2] Exhibit "K", *id.* at 105.

[3] Exhibit "L", *id.* at 106-109.

[4] Exhibit "C", *id.* at 87-89.

[5] Exhibit "H", *id.* at 101-103.

also built and repaired speedboats as a hobby. In 1989, Jambrich purchased an engine and some accessories for his boat from petitioner, for which he became indebted to the latter for about ₱150,000.00. To pay for his debt, he sold his rights and interests in the Agro-Macro properties to petitioner for ₱250,000, as evidenced by a "Deed of Absolute Sale/Assignment."[6] On July 26, 1991, when petitioner sought to register the deed of assignment, he discovered that titles to the three lots have been transferred in the name of respondent, and that the subject property has already been mortgaged.

On August 2, 1991, petitioner filed a complaint against respondent for recovery of real property before the Regional Trial Court of Mandaue City. Petitioner alleged that the Contracts to Sell dated November 18, 1985 and March 10, 1986 and the Deed of Absolute Sale dated November 16, 1987 over the properties which identified both Jambrich and respondent as buyers do not reflect the true agreement of the parties since respondent did not pay a single centavo of the purchase price and was not in fact a buyer; that it was Jambrich alone who paid for the properties using his exclusive funds; that Jambrich was the real and absolute owner of the properties; and, that petitioner acquired absolute ownership by virtue of the Deed of Absolute Sale/Assignment dated July 11, 1991 which Jambrich executed in his favor.

In her Answer, respondent belied the allegation that she did not pay a single centavo of the purchase price. On the contrary, she claimed that she "solely and exclusively used her own personal funds to defray and pay for the purchase price of the subject lots in question," and that Jambrich, being an alien, was prohibited to acquire or own real property in the Philippines.

At the trial, respondent presented evidence showing her alleged financial capacity to buy the disputed property with money from a supposed copra business. Petitioner, in turn, presented Jambrich as his witness and documentary evidence showing the substantial

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[6] Exhibit "O", *id.* at 155.

salaries which Jambrich received while still employed by the Austrian company, Simmering-Graz Panker A.G.

In its decision, the court *a quo* found—

> Evidence on hand clearly show that at the time of the purchase and acquisition of [the] properties under litigation that Wilhelm Jambrich was still working and earning much. This fact of Jambrich earning much is not only supported by documentary evidence but also by the admission made by the defendant Antoniet[t]a Opalla. So that, **Jambrich's financial capacity to acquire and purchase the properties . . . is not disputed**.[7]
>
> x x x x x x x x x
>
> On the other hand, evidence . . . clearly show that before defendant met Jambrich sometime in the latter part of 1984, she was only working as a waitress at the St. Moritz Hotel with an income of ₱1,000.00 a month and was . . . renting and living only in . . . [a] room at . . . [a] squatter area at Gorordo Ave., Cebu City; that Jambrich took pity of her and the situation of her children that he offered her a better life which she readily accepted. In fact, this miserable financial situation of hers and her two children . . . are all stated and reflected in the Child Study Report dated April 20, 1983 (Exhs. "G" and "G-1") which facts she supplied to the Social Worker who prepared the same when she was personally interviewed by her in connection with the adoption of her two children by Wilhelm Jambrich. So that, if such facts were not true because these are now denied by her . . . and if it was also true that during this time she was already earning as much as ₱8,000.00 to ₱9,000.00 as profit per month from her copra business, it would be highly unbelievable and impossible for her to be living only in such a miserable condition since it is the observation of this Court that she is not only an extravagant but also an expensive person and not thrifty as she wanted to impress this Court in order to have a big saving as clearly shown by her actuation when she was already cohabiting and living with Jambrich that according to her . . . the allowance given . . . by him in the amount of $500.00 a month is not enough to maintain the education and maintenance of her children.[8]

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[7] Decision, *id.* at 294.

[8] *Id.* at 295-296.

This being the case, **it is highly improbable and impossible that she could acquire the properties under litigation or could contribute any amount for their acquisition** which according to her is worth more than ₱700,000.00 **when while she was working as [a] waitress at St. Moritz Hotel earning ₱1,000.00 a month as salary and tips of more or less ₱2,000.00 she could not even provide [for] the daily needs of her family so much so that it is safe to conclude that she was really in financial distress when she met and accepted the offer of Jambrich to come and live with him because that was a big financial opportunity for her and her children who were already abandoned by her husband**.[9]

x x x x x x x x x

The only probable and possible reason why her name appeared and was included in [the contracts to sell dated November 18, 1985 and March 10, 1986 and finally, the deed of absolute sale dated November 16, 1987] as buyer is because as observed by the Court, she being a scheming and exploitive woman, she has taken advantage of the goodness of Jambrich who at that time was still bewitched by her beauty, sweetness, and good attitude shown by her to him since he could still very well provide for everything she needs, he being earning *(sic)* much yet at that time. In fact, as observed by this Court, the acquisition of these properties under litigation was at the time when their relationship was still going smoothly and harmoniously.[10] [Emphasis supplied.]

The dispositive portion of the Decision states:

WHEREFORE, . . . Decision is hereby rendered in favor of the plaintiff and against the defendant Antoniet[t]a Opalla by:

1) Declaring plaintiff as the owner in fee simple over the residential house of strong materials and three parcels of land designated as Lot Nos. 1, 3 and 5 which are covered by TCT Nos. 24790, 24791 and 24792 issued by the Register of Deeds of Mandaue City;

2) Declaring as null and void TCT Nos. 24790, 24791 and 24792 issued in the name of defendant Antoniet[t]a Descallar by the Register of Deeds of Mandaue City;

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[9] *Id.* at 296.

[10] *Id.* at 297.

3) Ordering the Register of Deeds of Mandaue City to cancel TCT Nos. 24790, 24791 and 24792 in the name of defendant Antoniet[t]a Descallar and to issue new ones in the name of plaintiff Camilo F. Borromeo;

4) Declaring the contracts now marked as Exhibits "I", "K" and "L" as avoided insofar as they appear to convey rights and interests over the properties in question to the defendant Antoniet[t]a Descallar;

5) Ordering the defendant to pay plaintiff attorney's fees in the amount of ₱25,000.00 and litigation expenses in the amount of ₱10,000.00; and,

6) To pay the costs.[11]

Respondent appealed to the Court of Appeals. In a Decision dated April 10, 2002,[12] the appellate court reversed the decision of the trial court. In ruling for the respondent, the Court of Appeals held:

We disagree with the lower court's conclusion. The circumstances involved in the case cited by the lower court and similar cases decided on by the Supreme Court which upheld the validity of the title of the subsequent Filipino purchasers are absent in the case at bar. It should be noted that in said cases, the title to the subject property has been issued in the name of the alien transferee (*Godinez et al., vs. Fong Pak Luen et al.,* 120 SCRA 223 citing *Krivenko vs. Register of Deeds of Manila,* 79 Phils. 461; *United Church Board for World Ministries vs. Sebastian,* 159 SCRA 446, citing the case of *Sarsosa Vda. De Barsobia vs. Cuenco,* 113 SCRA 547; *Tejido vs. Zamacoma,* 138 SCRA 78). In the case at bar, the title of the subject property is not in the name of Jambrich but in the name of defendant-appellant. Thus, Jambrich could not have transferred a property he has no title thereto.[13]

Petitioner's motion for reconsideration was denied.

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

[12] *Id.* at 71-83.

[13] CA *rollo,* pp. 225-226.

Hence, this petition for review.

Petitioner assigns the following errors:

I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING RESPONDENT'S JUDICIAL ADMISSION AND OTHER OVERWHELMING EVIDENCE ESTABLISHING JAMBRICH'S PARTICIPATION, INTEREST AND OWNERSHIP OF THE PROPERTIES IN QUESTION AS FOUND BY THE HONORABLE TRIAL COURT.

II. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT JAMBRICH HAS NO TITLE TO THE PROPERTIES IN QUESTION AND MAY NOT THEREFORE TRANSFER AND ASSIGN ANY RIGHTS AND INTERESTS IN FAVOR OF PETITIONER.

III. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE WELL-REASONED DECISION OF THE TRIAL COURT AND IN IMPOSING DOUBLE COSTS AGAINST HEREIN PETITIONER (THEN, PLAINTIFF-APPELLEE).[14]

First, who purchased the subject properties?

The evidence clearly shows, as pointed out by the trial court, who between respondent and Jambrich possesses the financial capacity to acquire the properties in dispute. At the time of the acquisition of the properties in 1985 to 1986, Jambrich was gainfully employed at Simmering-Graz Panker A.G., an Austrian company. He was earning an estimated monthly salary of ₱50,000.00. Then, Jambrich was assigned to Syria for almost one year where his monthly salary was approximately ₱90,000.00.

On the other hand, respondent was employed as a waitress from 1984 to 1985 with a monthly salary of not more than ₱1,000.00. In 1986, when the parcels of land were acquired, she was unemployed, as admitted by her during the pre-trial conference. Her allegations of income from a copra business

[14] *Rollo*, p. 15.

were unsubstantiated. The supposed copra business was actually the business of her mother and their family, with ten siblings. She has no license to sell copra, and had not filed any income tax return. All the motorized bancas of her mother were lost to fire, and the last one left standing was already scrap. Further, the Child Study Report[15] submitted by the Department of Social Welfare and Development (DSWD) in the adoption proceedings of respondent's two sons by Jambrich disclosed that:

> Antonietta tried all types of job to support the children until she was accepted as a waitress at St. Moritz Restaurant in 1984. At first she had no problem with money because most of the customers of St. Moritz are (*sic*) foreigners and they gave good tips but towards the end of 1984 there were no more foreigners coming because of the situation in the Philippines at that time. Her financial problem started then. She was even renting a small room in a squatters area in Gorordo Ave., Cebu City. It was during her time of great financial distress that she met Wilhelm Jambrich who later offered her a decent place for herself and her children.[16]

The DSWD Home Study Report[17] further disclosed that:

> [Jambrich] was then at the Restaurant of St. Moritz when he saw Antonietta Descallar, one of the waitresses of the said Restaurants. He made friends with the girl and asked her to tutor him in [the] English language. Antonietta accepted the offer because she was in need of additional income to support [her] 2 young children who were abandoned by their father. Their session was agreed to be scheduled every afternoon at the residence of Antonietta in the squatters area in Gorordo Avenue, Cebu City. The Austrian was observing the situation of the family particularly the children who were malnourished. After a few months sessions, Mr. Jambrich offered to transfer the family into a decent place. He told Antonietta that the place is not good for the children. Antonietta who was miserable and financially distressed at that time accepted the offer for the sake of the children.[18]

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[15] Exhibit "G", Original Records, pp. 97-100.

[16] *Id.* at 100.

[17] Exhibit "F", *id.* at 92-96.

[18] *Id.* at 93.

Further, the following additional pieces of evidence point to Jambrich as the source of fund used to purchase the three parcels of land, and to construct the house thereon:

(1) Respondent Descallar herself affirmed under oath, during her re-direct examination and during the proceedings for the adoption of her minor children, that Jambrich was the owner of the properties in question, but that his name was deleted in the Deed of Absolute Sale because of legal constraints. Nonetheless, his signature remained in the deed of sale, where he signed as buyer.

(2) The money used to pay the subject parcels of land in installments was in postdated checks issued by Jambrich. Respondent has never opened any account with any bank. Receipts of the installment payments were also in the name of Jambrich and respondent.

(3) In 1986-1987, respondent lived in Syria with Jambrich and her two children for ten months, where she was completely under the support of Jambrich.

(4) Jambrich executed a Last Will and Testament, where he, as owner, bequeathed the subject properties to respondent.

Thus, Jambrich has all authority to transfer all his rights, interests and participation over the subject properties to petitioner by virtue of the Deed of Assignment he executed on July 11, 1991.

Well-settled is the rule that this Court is not a trier of facts. The findings of fact of the trial court are accorded great weight and respect, if not finality by this Court, subject to a number of exceptions. In the instant case, we find no reason to disturb the factual findings of the trial court. Even the appellate court did not controvert the factual findings of the trial court. They differed only in their conclusions of law.

Further, the fact that the disputed properties were acquired during the couple's cohabitation also does not help respondent. The rule that co-ownership applies to a man and a woman living exclusively with each other as husband and wife without

the benefit of marriage, but are otherwise capacitated to marry each other, does not apply.[19] In the instant case, respondent was still legally married to another when she and Jambrich lived together. In such an adulterous relationship, no co-ownership exists between the parties. It is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay claim to any portion of it. Presumptions of co-ownership and equal contribution do not apply.[20]

Second, we dispose of the issue of registration of the properties in the name of respondent alone. Having found that the true buyer of the disputed house and lots was the Austrian Wilhelm Jambrich, what now is the effect of registration of the properties in the name of respondent?

It is settled that registration is not a mode of acquiring ownership.[21] It is only a means of confirming the fact of its existence with notice to the world at large.[22] Certificates of title are not a source of right. The mere possession of a title does not make one the true owner of the property. Thus, the mere fact that respondent has the titles of the disputed properties in her name does not necessarily, conclusively and absolutely make her the owner. The rule on indefeasibility of title likewise does not apply to respondent. A certificate of title implies that the title is quiet,[23] and that it is perfect, absolute and indefeasible.[24] However, there are well-defined exceptions to this rule, as when the transferee is not a holder in good faith and did not

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[19] Art. 144, Civil Code; Art. 147, Family Code.

[20] Art. 148, Family Code; *Rivera v. Heirs of Romualdo Villanueva*, G.R. No. 141501, July 21, 2006, 496 SCRA 135.

[21] *Bollozos v. Yu Tieng Su*, No. L-29442, November 11, 1987, 155 SCRA 506.

[22] *Id.* at 517, citing *Bautista v. Dy Bun Chin*, CA-L-6983-R, 49 O.G. 179.

[23] *Legarda and Prieto v. Saleeby*, 31 Phil. 590 (1915).

[24] *Government v. Avila*, 38 Phil. 38 (1918).

acquire the subject properties for a valuable consideration.[25] This is the situation in the instant case. Respondent did not contribute a single centavo in the acquisition of the properties. She had no income of her own at that time, nor did she have any savings. She and her two sons were then fully supported by Jambrich.

Respondent argued that aliens are prohibited from acquiring private land. This is embodied in Section 7, Article XII of the 1987 Constitution,[26] which is basically a reproduction of Section 5, Article XIII of the 1935 Constitution,[27] and Section 14, Article XIV of the 1973 Constitution.[28] The capacity to acquire private land is dependent on the capacity "to acquire or hold lands of the public domain." Private land may be transferred only to individuals or entities "qualified to acquire or hold lands of the public domain." Only Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos are qualified to acquire or hold lands of the public domain. Thus, as the rule now stands, the fundamental law explicitly prohibits non-Filipinos from acquiring or holding title to private lands, except only by way of legal succession or if the acquisition was made by a former natural-born citizen.[29]

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[25] *Ignacio v. Chua Beng*, 52 Phil. 940 (1929); *Acosta v. Gomez*, 52 Phil. 744 (1929); *Cruz v. Fabie*, 35 Phil. 144 (1916).

[26] SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

[27] SECTION 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

[28] SECTION 14. Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

[29] 1987 Constitution, Art. XII, Sec. 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

Therefore, in the instant case, the transfer of land from Agro-Macro Development Corporation to Jambrich, who is an Austrian, would have been declared invalid if challenged, had not Jambrich conveyed the properties to petitioner who is a Filipino citizen. In ***United Church Board for World Ministries v. Sebastian***,[30] the Court reiterated the consistent ruling in a number of cases[31] that if land is invalidly transferred to an alien who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid. Applying **United Church Board for World Ministries**, the trial court ruled in favor of petitioner, *viz.*:

> [W]hile the acquisition and the purchase of (*sic*) Wilhelm Jambrich of the properties under litigation [were] void *ab initio* since [they were] contrary to the Constitution of the Philippines, he being a foreigner, yet, the acquisition of these properties by plaintiff who is a Filipino citizen from him, has cured the flaw in the original transaction and the title of the transferee is valid.

The trial court upheld the sale by Jambrich in favor of petitioner and ordered the cancellation of the TCTs in the name of respondent. It declared petitioner as owner in fee simple of the residential house of strong materials and three parcels of land designated as Lot Nos. 1, 3 and 5, and ordered the Register of Deeds of Mandaue City to issue new certificates of title in his name. The trial court likewise ordered respondent to pay petitioner ₱25,000 as attorney's fees and ₱10,000 as litigation expenses, as well as the costs of suit.

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[30] G.R. No. L-34672, March 30, 1988, 159 SCRA 446.

[31] *Sarsosa Vda. de Barsobia v. Cuenco*, G.R. No. L-33048, April 16, 1982, 113 SCRA 547; *Godinez v. Pak Luen*, G.R. No. L-36731, January 27, 1983, 120 SCRA 223, *Vasquez v. Li Seng Giap & Sons*, 96 Phil. 447 (1955); *Herrera v. Luy King Guan*, G.R. No. L-17043, January 31, 1961, 1 SCRA 406; *Yap v. Maravillas*, G.R. No. L-31606, March 28, 1983, 121 SCRA 244; and *De Castro v. Tan*, G.R. No. L-31956, April 30, 1984, 129 SCRA 85.

We affirm the Regional Trial Court.

The rationale behind the Court's ruling in **United Church Board for World Ministries**, as reiterated in subsequent cases,[32] is this – since the ban on aliens is intended to preserve the nation's land for future generations of Filipinos, that aim is achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization or those transfers made by aliens to Filipino citizens. As the property in dispute is already in the hands of a qualified person, a Filipino citizen, there would be no more public policy to be protected. The objective of the constitutional provision to keep our lands in Filipino hands has been achieved.

IN VIEW WHEREOF, the petition is *GRANTED*. The Decision of the Court of Appeals in C.A. G.R. CV No. 42929 dated April 10, 2002 and its Resolution dated July 8, 2003 are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Mandaue City in Civil Case No. MAN-1148 is *REINSTATED*.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Brion, JJ.,* concur.

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[32] *Hko Ah Pao v. Ting*, G.R. No. 153476, September 27, 2006, 503 SCRA 551; *Muller v. Muller*, G.R. No. 149615, August 29, 2006, 500 SCRA 65; *Lee v. Republic*, G.R. No. 128195, October 3, 2001, 366 SCRA 524.

FIRST DIVISION

[G.R. No. 171891. February 24, 2009]

HERNANIA "LANI" LOPEZ, *petitioner, vs.* **GLORIA UMALE-COSME,** *respondent.*

SYLLABUS

CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEASE; WHERE A CONTRACT OF LEASE IS VERBAL AND ON A MONTHLY BASIS, THE LEASE IS ONE WITH A DEFINITE PERIOD WHICH EXPIRES AFTER THE LAST DAY OF ANY GIVEN THIRTY-DAY PERIOD; CASE AT BAR. — It is well settled that where a contract of lease is verbal and on a monthly basis, the lease is one with a definite period which expires after the last day of any given thirty-day period. In the recent case of *Leo Wee v. De Castro* where the lease contract between the parties did not stipulate a fixed period, we ruled. "The rentals being paid monthly, the period of such lease is deemed terminated at the end of each month. Thus, respondents have every right to demand the ejectment of petitioners at the end of each month, the contract having expired by operation of law. Without a lease contract, petitioner has no right of possession to the subject property and must vacate the same. Respondents, thus, should be allowed to resort to an action for ejectment before the MTC to recover possession of the subject property from petitioner. Corollarily, petitioner's ejectment, in this case, is only the reasonable consequence of his unrelenting refusal to comply with the respondents' demand for the payment of rental increase agreed upon by both parties. Verily, the lessor's right to rescind the contract of lease for non-payment of the demanded increased rental was recognized by this Court in *Chua v. Victorio*: The right of rescission is statutorily recognized in reciprocal obligations, such as contracts of lease. x x x under Article 1659 of the Civil Code, the aggrieved party may, at his option, ask for (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force. Payment of the rent is one of a lessee's statutory obligations, and, upon

non-payment by petitioners of the increased rental in September 1994, the lessor acquired the right to avail of any of the three remedies outlined above." In the case at bar, it has been sufficiently established that no written contract existed between the parties and that rent was being paid by petitioner to respondent on a month-to-month basis. As the CA noted, petitioner admitted the lack of such written contract in her complaint. Moreover, in the instant petition for review, petitioner herself alleged that she has been occupying the leased premises and paying the monthly rentals without fail since 1975. Hence, petitioner's argument that the contract of lease between her and respondent lacked a definite period-and that corollarily, she may not be ejected on the ground of termination of period—does not hold water.

APPEARANCES OF COUNSEL

The Law Firm of Habitan Ferrer Chan Tagapan Patriarca & Associates for petitioner.
Carroll U. Tang for respondent.

D E C I S I O N

PUNO, *C.J.*:

Before us is a petition for review on *certiorari* under Rule 45 seeking a review of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA G.R. SP No. 82808 reversing the decision[3] of the Regional Trial Court (RTC), Branch 218, Quezon City.

Respondent Gloria Umale-Cosme is the owner of an apartment building at 15 Sibuyan Street, Sta. Mesa Heights, Quezon City, while the petitioner is a lessee of one of the units therein. She was paying a monthly rent of ₱1,340.00 as of 1999.

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[1] Promulgated on December 23, 2005.

[2] Dated March 13, 2006.

[3] Dated December 15, 2003.

On April 19, 1999, respondent filed a complaint for unlawful detainer against petitioner before Branch 43 of the Metropolitan Trial Court (MeTC) of Quezon City on the grounds of expiration of contract of lease and nonpayment of rentals from December 1998. In her answer, petitioner denied that she defaulted in the payment of her monthly rentals, claiming that respondent did not collect the rentals as they fell due in order to make it appear that she was in arrears. Petitioner also alleged that she had been depositing her monthly rentals in a bank in trust for respondent since February 1999.

On March 19, 2003, the MeTC, Branch 43, rendered judgment in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court finds for the plaintiff and the defendant Hernania "Lani" B. Lopez and all persons claiming rights under her or instructions are hereby ordered:
>
> 1. to vacate the leased premises located at 15-1, Sibuyan Street, Sta. Mesa Heights, Quezon City Quezon City (*sic*), Metro Manila;
>
> 2. to pay the plaintiff monthly rent in the amount of ₱1,340.00 starting December, 1998 up to the time that they shall have vacated and surrendered the leased premises to the plaintiff;
>
> 3. to pay the plaintiff the amount of ₱20,000.00 as and be (*sic*) way of attorney's fees; and
>
> 4. costs of suit.[4]

On appeal, the RTC reversed the decision of the MeTC and ruled that the contract of lease between respondent and petitioner lacked a definite period. According to the RTC, the lessee may not be ejected on the ground of termination of the period until the judicial authorities have fixed such period. It ratiocinated:

> Under the law, there is a noticeable change on the grounds for judicial ejectment as to expiration of the period. Paragraph (f) of Section 5, only speaks of expiration of the period of lease contract, deleting the phrase "of a written lease contract." However, under its Sec. 6, it provides:

[4] *Rollo*, p. 209.

> SECTION 6. Application of the Civil Code and Rules of Court of the Philippines. — Except when the lease is for a definite period, the provisions of paragraph (1) of Article 1673 of the Civil Code of the Philippines, insofar as they refer to residential units covered by this Act, shall be suspended during the effectivity of this Act, but other provisions of the Civil Code and the Rules of Court on lease contracts, insofar as they are not in conflict with the provisions of this Act shall apply.

BP Blg. 877 was extended by RA No. 6643, RA No. 6828, RA No. 7644, and RA No. 8437 approved 22 December 1997 extending the law up to 31 December 2001, without changed (*sic*) in the provision of the law except as to the period of maximum increase allowable.

The condition about the expiration of the period as provided for under Act 877 was never change (*sic*) despite the several extensionary (*sic*) laws to it.

The law is so perspicuous to allow other (*sic*) interpretation. It suspends the provisions of the first paragraph of Article 1673 of the Civil Code, except when the lease is for a definite period. Thus, if the lease has no period but to be fixed yet by the judicial authorities, the lessee may not be ejected on ground of termination of the period.

This particular provision compliments the very purpose of the law prohibiting increase in rentals more than the rates provided therefor.

If they could be ejected with ease just the same by simply interpreting that if a lessee is paying his rentals monthly, the lease is considered month to month, and month to month lease contract is with a definite period, then what part of Article 1673 was suspended?

The amendatory provisions of the Rent Control Law, which the lawmakers had deemed proper to extend everytime (*sic*) it is about to expire, is nothing but illusory!

In light of the above reasoning, plaintiff-appellee's ground based on the expiration of the lease contract must fail. BP Blg. 877 as amended suspends the ejectment of lessees based on the expiration of lease contract where there was no agreement as to a definite lease period.

Finally, the plaintiff has, in effect, abandoned her other ground of non-payment of rental having stipulated on the consignation by defendant of the back rental from December 1998 to September 2002 during the pre-trial.

WHEREFORE, premises considered, the assailed decision is REVERSED and SET ASIDE. The case is DISMISSED.

SO ORDERED.[5]

Respondent's motion for reconsideration was denied by the RTC in a Resolution dated February 2, 2004.

Aggrieved, respondent repaired to the CA, which found merit in her appeal, thus:

It is worthy to note that in her answer, respondent admitted the allegations in paragraph 5 of the complaint that the apartment unit was leased to her by petitioner on a month to month basis.

Article 1673 (1) of the Civil Code provides that the lessor may judicially eject the lessee when the period agreed upon, or that which is fixed for the duration of leases under Articles 1682 and 1687, has expired. Article 1687 of the same Code provides that if the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily.

On the other hand, Section 6 of Batas Pambansa Bilang 877 reads:

> Sec. 6: *Application of the Civil Code and Rules of Court of the Philippines.* — Except when the lease is for a definite period, the provisions of paragraph (1) of Article 1673 of the Civil Code of the Philippines, insofar as they refer to residential units covered by this Act, shall be suspended during the effectivity of this Act, but other provisions of the Civil Code and the Rules of Court on lease contracts, insofar as they are not in conflict with the provisions of the Act shall apply.

In *Acab v. Court of Appeals*, it was held that Section 6 of B.P. Blg. 877 does not suspend the effects of Article 1687 of the Civil Code. Lease agreements with no specified period, but in which rentals are paid monthly, are considered to be on a month-to-month basis. They are for a definite period and expire after the last day of any given thirty-day period, upon proper demand and notice by the lessor to vacate. In the case at bench, petitioner had shown that written notices of termination of lease and to vacate were sent by her to respondent, but the latter refused to

[5] *Rollo*, pp. 166-167.

acknowledge receipt thereof. In view thereof, he caused the posting of said notice on the leased premises in the presence of the *barangay* security officers on March 1, 1999.[6]

The CA denied petitioner's Motion for Reconsideration in a resolution dated March 13, 2006. As a consequence, petitioner filed the instant petition for review, where she argues that the CA gravely erred when it ruled that she may be ejected on the ground of termination of lease contract.

The petition is utterly bereft of merit.

It is well settled that where a contract of lease is verbal and on a monthly basis, the lease is one with a definite period which expires after the last day of any given thirty-day period.[7] In the recent case of *Leo Wee v. De Castro* where the lease contract between the parties did not stipulate a fixed period,[8] we ruled:

> The rentals being paid monthly, the period of such lease is deemed terminated at the end of each month. Thus, respondents have every right to demand the ejectment of petitioners at the end of each month, the contract having expired by operation of law. Without a lease contract, petitioner has no right of possession to the subject property and must vacate the same. Respondents, thus, should be allowed to resort to an action for ejectment before the MTC to recover possession of the subject property from petitioner.
>
> Corollarily, petitioner's ejectment, in this case, is only the reasonable consequence of his unrelenting refusal to comply with the respondents' demand for the payment of rental increase agreed upon by both parties.

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[6] *Rollo*, pp. 20-29.

[7] *Leo Wee v. De Castro*, G.R. No. 176405, August 20, 2008, pp. 11-12; *Dula v. Maravilla*, G.R. No. 134267, May 9, 2005, 458 SCRA 249, 258-262; *La Jolla, Inc. v. Court of Appeals*, G.R. No. 115851, June 20, 2001, 359 SCRA 102, 110; *De Vera v. CA*, G.R. No. 110297, August 7, 1996, 260 SCRA 396, 400; *Legar Management v. CA*, G.R. No. 117423, January 24, 1996, 252 SCRA 335, 338-340; *Acab v. CA*, G.R. No. 112285, February 21, 1995, 241 SCRA 546, 550-551; *Palanca v. IAC*, G.R. No. 71566, December 15, 1989, 180 SCRA 119, 127-129; *Uy Hoo v. CA*, G.R. No. 83263, June 14, 1989, 174 SCRA 100, 103-107; *Rivera v. Florendo*, 60066, July 31, 1986, 143 SCRA 278, 286-287; *Baens v. Court of Appeals*, No. 57091, November 23, 1983, 125 SCRA 634, 644.

[8] *Supra*, see note 7.

Verily, the lessor's right to rescind the contract of lease for non-payment of the demanded increased rental was recognized by this Court in *Chua v. Victorio*:

> The right of rescission is statutorily recognized in reciprocal obligations, such as contracts of lease. x x x under Article 1659 of the Civil Code, the aggrieved party may, at his option, ask for (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force. Payment of the rent is one of a lessee's statutory obligations, and, upon non-payment by petitioners of the increased rental in September 1994, the lessor acquired the right to avail of any of the three remedies outlined above. (*citations omitted*)

In the case at bar, it has been sufficiently established that no written contract existed between the parties and that rent was being paid by petitioner to respondent on a month-to-month basis. As the CA noted, petitioner admitted the lack of such written contract in her complaint.[9] Moreover, in the instant petition for review, petitioner herself alleged that she has been occupying the leased premises and paying the monthly rentals without fail since 1975.[10] Hence, petitioner's argument that the contract of lease between her and respondent lacked a definite period–and that corollarily, she may not be ejected on the ground of termination of period–does not hold water. Petitioner was merely grasping at straws when she imputed grave error upon the CA's decision to eject her from the leased premises.

IN VIEW WHEREOF, the instant petition is *DENIED*. The decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Brion, JJ.*, concur.

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[9] *Rollo*, p. 28.

[10] *Rollo*, p. 19.

FIRST DIVISION

[G.R. No. 172172. February 24, 2009]

SPS. ERNESTO V. YU AND ELSIE ONG YU, *petitioners, vs.* **BALTAZAR N. PACLEB, (Substituted by ANTONIETA S. PACLEB, LORNA PACLEB-GUERRERO, FLORENCIO C. PACLEB, and MYRLA C. PACLEB),** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; SALE OF REAL ESTATE; THE LAW PROTECTS TO A GREATER DEGREE A PURCHASER WHO BUYS FROM THE REGISTERED OWNER HIMSELF. — The case law is well-settled, *viz.*: "The law protects to a greater degree a purchaser who buys from the registered owner himself. **Corollarily, it requires a higher degree of prudence from one who buys from a person who is not the registered owner, although the land object of the transaction is registered**. While one who buys from the registered owner does not need to look behind the certificate of title, **one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land.** This Court has consistently applied the **stricter rule** when it comes to deciding the issue of good faith of one who buys from one who is not the registered owner, but who exhibits a certificate of title."

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ACTIONS *IN PERSONAM* AND ACTIONS *QUASI IN REM*, DISTINGUISHED. — In ***Domagas v. Jensen,*** we distinguished between actions *in personam* and actions *quasi in rem.* "The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or *quasi in rem* for that matter, is determined by its nature and purpose, and by these only. **A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the**

person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him. **An action in personam is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the propriety (sic) to determine its state.** It has been held that an action *in personam* is a proceeding to enforce personal rights or obligations; such action is brought against the person. x x x On the other hand, a proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed. **In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property**. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action."

3. ID.; ID.; ID.; ACTIONS *IN PERSONAM*; AN ACTION FOR SPECIFIC PERFORMANCE IS AN ACTION *IN PERSONAM.* — We have held in an unbroken string of cases that an action for specific performance is an action *in personam*. In ***Cabutihan v. Landcenter Construction and Development Corporation,*** we ruled that an action for specific performance praying for the execution of a deed of sale in connection with an undertaking in a contract, such as the contract to sell, in this instance, is an action *in personam.*

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Erlinda S. Abalos for respondents.

D E C I S I O N

PUNO, *C.J.*:

Before the Court is a Petition filed under Rule 45 of the Rules of Court assailing: (i) the Decision[1] dated August 31, 2005 of the Court of Appeals in CA-G.R. CV No. 78629 setting aside the Decision[2] dated December 27, 2002 of the Regional Trial Court in Civil Case No. 1325-96; and (ii) the Resolution[3] dated April 3, 2006 of the Court of Appeals denying reconsideration of the said decision.

The facts are well established.

Respondent Baltazar N. Pacleb and his late first wife, Angelita Chan, are the registered owners of an 18,000-square meter parcel of land in Barrio Langcaan, Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) No. T-118375[4] (Langcaan Property).

In 1992, the Langcaan Property became the subject of three (3) documents purporting to transfer its ownership. On February 27, 1992, a Deed of Absolute Sale[5] was entered into between Spouses Baltazar N. Pacleb and Angelita Chan and Rebecca Del Rosario. On May 7, 1992, a Deed of Absolute Sale[6] was entered into between Rebecca Del Rosario and Ruperto L. Javier (Javier). On November 10, 1992, a Contract to Sell[7] was entered into between Javier and petitioner spouses Ernesto V. Yu and Elsie Ong Yu. In their contract, petitioner spouses

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[1] *Rollo*, pp. 21-33; penned by Justice Santiago Javier Ranada and concurred in by Justices Marina L. Buzon and Mario L. Guariña III.

[2] *Id.* at 42-47; penned by Executive Judge Dolores L. Español, Regional Trial Court of Dasmariñas, Cavite, Branch 90.

[3] *Id.* at 35-41.

[4] Exhibit "A", records, pp. 223-224.

[5] Exhibit "1", *id.* at 290-291.

[6] Exhibit "2", *id.* at 292-293.

[7] Exhibit "4", *id.* at 296-298.

Yu agreed to pay Javier a total consideration of ₱900,000. Six hundred thousand pesos (₱600,000) (consisting of ₱200,000 as previous payment and ₱400,000 to be paid upon execution of the contract) was acknowledged as received by Javier and ₱300,000 remained as balance. Javier undertook to deliver possession of the Langcaan Property and to sign a deed of absolute sale within thirty (30) days from execution of the contract.

All the aforementioned sales were not registered.

On April 23, 1993, petitioner spouses Yu filed with the Regional Trial Court of Imus, Cavite, a Complaint[8] for specific performance and damages against Javier, docketed as Civil Case No. 741-93, to compel the latter to deliver to them ownership and possession, as well as title to the Langcaan Property. In their Complaint, they alleged that Javier represented to them that the Langcaan Property was not tenanted. However, after they already paid ₱200,000 as initial payment and entered into an Agreement dated September 11, 1992 for the sale of the Langcaan Property, they discovered it was tenanted by Ramon C. Pacleb (Ramon).[9] Petitioner spouses demanded the cancellation of their agreement and the return of their initial payment. Thereafter, petitioner spouses and Javier verified from Ramon if he was willing to vacate the property and the latter was agreeable. Javier then promised to make arrangements with Ramon to vacate the property and to pay the latter his disturbance compensation. Hence, they proceeded to enter into a Contract to Sell canceling the Agreement mentioned. However, Javier failed to comply with his obligations.

Javier did not appear in the proceedings and was declared in default. On September 8, 1994, the trial court rendered a Decision,[10] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendant based on the sale of subject parcel of land to

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[8] Exhibit "6", *id.* at 302-307.

[9] *Id.* at 303-304.

[10] Exhibit "7", *id.* at 308-311.

the former who is entitled thereby to the ownership and possession thereof from the said defendant who is further directed to pay damages of Thirty Thousand Pesos (₱30,000.00) including attorney's fees and expenses incurred by the plaintiff in this case as a consequence.

The defendant is further directed to deliver the certificate of title of the land to the plaintiff who is entitled to it as transferee and new owner thereof upon payment by the plaintiff of his balance of the purchase price in the sum of Three Hundred Thousand Pesos (₱300,000.00) with legal interest from date.

SO ORDERED.

The said Decision and its Certificate of Finality[11] were annotated on TCT No. T-118375 as Entry No. 2676-75[12] and Entry No. 2677-75,[13] respectively.

On March 10, 1995, petitioner spouses and Ramon and the latter's wife, Corazon Bodino, executed a "*Kusangloob na Pagsasauli ng Lupang Sakahan at Pagpapahayag ng Pagtalikod sa Karapatan*."[14] Under the said agreement, petitioner spouses paid Ramon the amount of ₱500,000 in exchange for the waiver of his tenancy rights over the Langcaan Property.

On October 12, 1995, respondent filed a Complaint[15] for annulment of deed of sale and other documents arising from it, docketed as Civil Case No. 1199-95. He alleged that the deed of sale purportedly executed between him and his late first wife and Rebecca Del Rosario was spurious as their signatures thereon were forgeries. Respondent moved to have summons served upon Rebecca Del Rosario by publication since the latter's address could not be found. The trial court, however, denied his motion.[16] Respondent then

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[11] Exhibit "8", *id.* at 312.

[12] Exhibit "9-A", *id.* at 223.

[13] Exhibit "9-B", *id.* at 223.

[14] Exhibit "3", *id.* at 294-295.

[15] *Id.* at 39-41.

[16] Order dated March 7, 1996, Exhibit "6-C", *id.* at 209.

moved to dismiss the case, and the trial court granted the motion in its Order[17] dated April 11, 1996, dismissing the case without prejudice.

Meanwhile, on November 23, 1995, petitioner spouses filed an action for forcible entry against respondent with the Municipal Trial Court (MTC). They alleged that they had prior physical possession of the Langcaan Property through their trustee, Ramon, until the latter was ousted by respondent in September 1995. The MTC ruled in favor of petitioner spouses, which decision was affirmed by the Regional Trial Court.[18] However, the Court of Appeals set aside the decisions of the lower courts and found that it was respondent who had prior physical possession of the property as shown by his payment of real estate taxes thereon.[19]

On May 29, 1996, respondent filed the instant case for removal of cloud from title with damages to cancel Entry No. 2676-75 and Entry No. 2677-75, the annotated Decision in Civil Case No. 741-93 and its Certificate of Finality, from the title of the Langcaan Property.[20] Respondent alleged that the deed of sale between him and his late first wife and Rebecca Del Rosario, who is not known to them, could not have been possibly executed on February 27, 1992, the date appearing thereon. He alleged that on said date, he was residing in the United States[21] and his late first wife, Angelita Chan, died twenty (20) years ago.[22]

On May 28, 1997, during the pendency of the instant case before the trial court, respondent died without having testified on the merits of his case. Hence, he was substituted by his surviving spouse, Antonieta S. Pacleb, and Lorna Pacleb-

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[17] Exhibit "6-B", *id.* at 208.

[18] *Rollo*, p. 25.

[19] Decision dated March 18, 1997, Exhibit "D", *id.* at 91-95.

[20] Complaint, *id.* at 1-5.

[21] Exhibit "B", *id.* at 225-226.

[22] Exhibit "D", *id.* at 231.

Guerrero, Florencio C. Pacleb and Myrla C. Pacleb representing the children with the first wife.[23]

On December 27, 2002, the trial court dismissed respondent's case and held that petitioner spouses are purchasers in good faith.[24] The trial court ratiocinated that the dismissal of respondent's complaint for annulment of the successive sales at his instance "sealed the regularity of the purchase"[25] by petitioner spouses and that he "in effect admits that the said sale…was valid and in order."[26] Further, the trial court held that the Decision in Civil Case No. 741-93 on petitioner spouses' action for specific performance against Javier is already final and can no longer be altered. Accordingly, the trial court ordered the cancellation of TCT No. T-118375 in the name of respondent and the issuance of a new title in the name of petitioner spouses. The trial court also ordered the heirs of respondent and all persons claiming under them to surrender possession of the Langcaan Property to petitioner spouses.

On appeal by respondent, the Court of Appeals reversed and set aside the decision of the trial court.[27] The Court of Appeals ruled that petitioner spouses are not purchasers in good faith and that the Decision in Civil Case No. 741-93 did not transfer ownership of the Langcaan Property to them. Accordingly, the appellate court ordered the cancellation of the annotation of the Decision in Civil Case No. 741-93 on the title of the Langcaan Property. The Court of Appeals denied reconsideration of said decision.[28]

Hence, this Petition.

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[23] Order dated January 30, 1998, *id.* at 158-160.

[24] *Supra* note 2.

[25] *Id.* at 44.

[26] *Id.* at 46.

[27] *Supra* note 1.

[28] *Supra* note 3.

Two issues are involved in the instant petition. The first is whether petitioner spouses are innocent purchasers for value and in good faith. The second is whether ownership over the Langcaan Property was properly vested in petitioner spouses by virtue of the Decision in Civil Case No. 741-93.

Petitioner spouses argue that they are purchasers in good faith. Further, they contend that the Court of Appeals erred in finding that: "Ramon told him [Ernesto V. Yu] that the property is owned by his father, Baltazar, and that he is the mere caretaker thereof"[29] since Ramon clarified that his father was the **former** owner of the Langcaan Property. In support of their stance, they cite the following testimony of petitioner Ernesto V. Yu:

Atty. Abalos:	Mr. Witness, you testified during the direct that you acquired the subject property from one Ruperto Javier, when for the first time have you come to know Mr. Ruperto Javier?
A:	I first came to know him in the year 1992 when he was accompanied by Mr. Kalagayan. He showed me some papers to the office.
Q:	Do you know the exact date Mr. Witness?
A:	I forgot the exact date, ma'am.
Q:	More or less can you estimate what month?
A:	Sometime in February or March 1992.
Q:	When you said that the subject property was offered to you for sale, what did you do Mr. Witness, in preparation for a transaction?
A:	I asked my lawyer Atty. Florencio Paredes to check and verify the Deed of Sale.
Q:	And after Atty. Florencio Paredes verified the document you decided to buy the property?
A:	No, ma'am. We visited the place.
Q:	When was that?

[29] *Supra* note 1 at 28.

A: I could not remember the exact date but I visited the place and I met the son, Ramon Pacleb. I went there in order to verify if the property is existing. When I verified that the property is existing Mr. Javier visited me again to follow-up what decision I have but I told him that I will wait for my lawyer's advi[c]e.

Q: Mr. Witness, what particular instruction did you give to your lawyer?

A: To verify the title and the documents.

Court: Documents for the title?

A: Yes, Your Honor.

Atty. Abalos: When you were able to get the title in whose name the title was registered?

A: It was registered in the name of the older Pacleb.

Court: By the way Mr. Witness, when you said you met Ramon Pacleb the son of the owner of the property, was he residing there or he was (sic) just went there? When you visited the property did you find him to be residing in that property?

A: No, Your Honor.

Atty. Abalos: You mean to say Mr. Witness, you just met Mr. Ramon Pacleb in the place at the time you went there?

A: No, ma'am. He went to my office with Mr. Kalagayan. He was introduced to me at the Kelly Hardware. I do not know Mr. Ruperto Javier. He told me that there is a property that [is] tenanted and occupied by the son Ramon Pacleb after that I went with them to visit the place. On (sic) there he introduced me [to] Mr. Ramon Pacleb the caretaker of the property and I told them that I will still look at the property and he gave me some documents and that (sic) documents I gave it to my lawyer for verification.

Q: You said that Mr. Ruperto Javier went to your office with Mr. Kalagayan, so the first time you visited the property you did not see Mr. Ramon Pacleb there?

A: No, ma'am. When I went there I met Ramon Pacleb the caretaker and he was the one who showed the place to us.

Q: Mr. Witness, since you visited the place you were able to see the allege[d] caretaker Mr. Ramon Pacleb, did you ask him regarding the property or the whereabouts of the registered owner, did you ask him?

A: When Ruperto introduced me to Mr. Ramon Pacleb he told me that he is the son of the owner and he is the caretaker and his father is in the States. He showed me the place, I verified and I saw the monuments and I told him I will come back to check the papers and if it is okay I will bring with me the surveyor.

Q: **Could you estimate Mr. Witness, more or less what was the month when you were able to talk to Mr. Ramon Pacleb?**

A: I am not sure but it was morning of February.

Q: So it was in February, Mr. Witness?

A: I am not sure if February or March.

Q: But definitely…

A: **Before I purchased the property I checked the property.**

Q: But that was definitely after Mr. Ruperto offered to you for sale the subject property?

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Atty. Abalos: Okay, Mr. Witness, you said that you talked to Mr. Ramon Pacleb and he told you that his father is the owner of the property?

A: He told me that property is their **former** property and it was owned by them. Now, he is the tenant of the property.[30] (Emphasis ours)

Petitioner spouses conclude that based on their personal inspection of the property and the representations of the registered tenant thereon, they had no reason to doubt the validity of the deeds of absolute sale since these were duly notarized. Consequently, the alleged forgery of Angelita Chan's signature is of no moment since they had no notice of any claim or interest of some other person in the property despite their diligent inquiry.

We find petitioner spouses' contentions without merit.

At the outset, we note that in petitioner Ernesto V. Yu's testimony, he stated that he inspected the Langcaan Property and talked with the tenant, Ramon, before he purchased the same. However, in his Complaint for specific performance and damages which he filed against Javier, he alleged that it was only after he had entered into an Agreement for the sale of the property and his initial payment of ₱200,000 that he discovered that the property was indeed being tenanted by Ramon who lives in the said farm, *viz.*:

8. Sometime on September 11, 1992, defendant came again to the Office of plaintiff reiterating his offer to sell said Lot No. 6853-D, containing an area of 18,000 square meters, at ₱75.00 per square meters (sic). Defendant manifested to the plaintiff that if his offer is acceptable to the plaintiff, he binds and obligates himself to pay the capital gains of previous transactions with the BIR and register subject Lot No. 6853-D in his name (defendant). On these conditions, **plaintiff accepted the offer and made [the] initial payment of TWO HUNDRED THOUSAND PESOS (₱200,000.00) to defendant by issuance and delivery of plaintiff's personal check.**

9. **Sometime on September 11, 1992, plaintiff and defendant signed an AGREEMENT on the sale** of Lot No. 6853-D of the

[30] TSN, July 3, 2001, pp. 2-7.

subdivision plan (LRC) Psd-282604, containing an area of 18,000 square meters, more or less, located at Bo. Langcaan, Municipality of Dasmarinas, Province of Cavite, at a selling price of ₱75.00 per square meter. A xerox copy of this AGREEMENT signed by the parties thereto is hereto attached and marked as ANNEX "D" of this complaint.

10. **Thereafter, however, plaintiff and defendant, with their surveyor discovered that subject Lot No. 6853-D offered for sale to the plaintiff is indeed being tenanted by one RAMON PACLEB who lives in the said farm.**

11. In view of the foregoing developments, plaintiff informed defendant that he wanted the Agreement be cancelled and for the defendant to return the sum of TWO HUNDRED THOUSAND PESOS (₱200,000.00).[31] (Emphasis supplied)

This inconsistency casts grave doubt as to whether petitioner spouses personally inspected the property before purchasing it.

More importantly, however, several facts should have put petitioner spouses on inquiry as to the alleged rights of their vendor, Javier, over the Langcaan Property.

First, it should be noted that the property remains to be registered in the name of respondent despite the two (2) Deeds of Absolute Sale[32] purporting to transfer the Langcaan Property from respondent and his late first wife, Angelita Chan, to Rebecca Del Rosario then from the latter to Javier. Both deeds were not even annotated in the title of the Langcaan Property.

Second, a perusal of the two deeds of absolute sale reveals that they were executed only about two (2) months apart and that they contain identical provisions.

Third, it is undisputed that the Langcaan Property is in the possession of Ramon, the son of the registered owner. Regardless of the representations given by the latter, this bare fact alone should have made petitioner spouses suspicious as to the veracity of the alleged title of their vendor. Moreover,

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[31] Exhibits "6-A" and "6-B", records, pp. 303-304.

[32] *Supra* notes 5 & 6.

as noted by the Court of Appeals, petitioner spouses could have easily verified the true status of the Langcaan Property from Ramon's wife, since the latter is their relative, as averred in paragraph 13 of their Answer in Civil Case No. 1199-95.[33] The case law is well settled, *viz.*:

> The law protects to a greater degree a purchaser who buys from the registered owner himself. **Corollarily, it requires a higher degree of prudence from one who buys from a person who is not the registered owner, although the land object of the transaction is registered.** While one who buys from the registered owner does not need to look behind the certificate of title, **one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land.**
>
> This Court has consistently applied the **stricter rule** when it comes to deciding the issue of good faith of one who buys from one who is not the registered owner, but who exhibits a certificate of title.[34] (Emphasis supplied)

Finally, as correctly pointed out by the Court of Appeals, the dismissal of Civil Case No. 1199-95 (the action to annul the successive sales of the property) cannot serve to validate the sale to petitioner spouses since the dismissal was ordered because Rebecca Del Rosario and Javier could no longer be found. Indeed, the dismissal was without prejudice.

Based on the foregoing, therefore, petitioner spouses cannot be considered as innocent purchasers in good faith.

We now go to the second issue.

Petitioner spouses argue that the decision of the Regional Trial Court in Civil Case No. 741-93 as to the rightful owner of the Langcaan Property is conclusive and binding upon respondent even if the latter was not a party thereto since it involved

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[33] *Supra* note 1 at 28-29.

[34] *Revilla and Fajardo v. Galindez*, 107 Phil. 480, 485 (1960).

the question of possession and ownership of real property, and is thus not merely an action *in personam* but an action *quasi in rem.*

In ***Domagas v. Jensen***,[35] we distinguished between actions *in personam* and actions *quasi in rem*.

> The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or *quasi in rem* for that matter, is determined by its nature and purpose, and by these only. **A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court.** The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him. **An action *in personam* is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the propriety (sic) to determine its state.** It has been held that an action *in personam* is a proceeding to enforce personal rights or obligations; such action is brought against the person.
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> xxx xxx xxx
>
> On the other hand, a proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed. **In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property**. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action.

Civil Case No. 741-93 is an action for specific performance and damages filed by petitioner spouses against Javier to compel performance of the latter's undertakings under their Contract to Sell. As correctly held by the Court of Appeals, its object is to

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[35] G.R. No. 158407, January 17, 2005, 448 SCRA 663, 673-674.

compel Javier to accept the full payment of the purchase price, and to execute a deed of absolute sale over the Langcaan Property in their favor. The obligations of Javier under the contract to sell attach to him alone, and do not burden the Langcaan Property.[36]

We have held in an unbroken string of cases that an action for specific performance is an action *in personam*.[37] In ***Cabutihan v. Landcenter Construction and Development Corporation***,[38] we ruled that an action for specific performance praying for the execution of a deed of sale in connection with an undertaking in a contract, such as the contract to sell, in this instance, is an action *in personam*.

Being a judgment *in personam*, Civil Case No. 741-93 is binding only upon the parties properly impleaded therein and duly heard or given an opportunity to be heard.[39] Therefore, it cannot bind respondent since he was not a party therein. Neither can respondent be considered as privy thereto since his signature and that of his late first wife, Angelita Chan, were forged in the deed of sale.

All told, we affirm the ruling of the Court of Appeals finding that, as between respondent and petitioner spouses, respondent has a better right over the Langcaan Property as the true owner thereof.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is affirmed. Costs against petitioners.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Brion, JJ.,* concur.

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[36] *Supra* note 3 at 40-41.

[37] *La Tondeña Distillera v. Judge Ponferrada*, 332 Phil. 593 (1996); *Siasoco v. Court of Appeals*, 362 Phil. 525 (1999); *Jose v. Boyon*, G.R. No. 147369, October 23, 2003, 414 SCRA 216.

[38] 432 Phil. 927 (2002).

[39] *Ching v. Court of Appeals*, G.R. No. 59731, January 11, 1990, 181 SCRA 9, 15-16.

SECOND DIVISION

[G.R. No. 174658. February 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARLON DELA CRUZ @ "DAGUL", * ADRIANO MELECIO, JESSIE REYES @ "PISO", and JEPOY OBELLO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT. — There being no eyewitness to the commission of the crime, the following provision of Section 4 of Rule 133 of the Rules of Court on circumstantial evidence applies: "SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." Conviction based on circumstantial evidence can be sustained, provided the circumstances proven constitute an unbroken chain which lead to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.

2. CRIMINAL LAW; CARNAPPING; DEFINED. — Carnaping is "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." x x x Carnaping refers specifically to the taking of a motor vehicle. It does not cover the taking of the cash or personal property which is not a motor vehicle.

3. ID.; ROBBERY WITH HOMICIDE; ELEMENTS. — Robbery with homicide x x x has the following elements: 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 characterized by intent to gain or *animo lucrandi*; 4. by reason of the robbery or on occasion thereof, homicide is committed.

* He is the only appellant.

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; ADMISSIONS AND CONFESSIONS; THE DECLARATION OF AN ACCUSED ACKNOWLEDGING HIS GUILT OF THE OFFENSE CHARGED, OR ANY OFFENSE NECESSARILY INCLUDED THEREIN, MAY BE GIVEN IN EVIDENCE AGAINST HIM. — Section 33 of Rule 130 of the Rules of Court provides that "[t]he declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him." *People v. Licayan* instructs: Accused-appellant cannot validly claim that the statement made by Rogelio "Jun-Jun" Dahilan, Jr. as to the location of the victim's body is hearsay. Any oral or documentary evidence is **hearsay** by nature *if its probative value* ***is not based on the personal knowledge of the witnesses*** *but on the knowledge of some other person who was never presented on the witness stand,* because it **is the *opportunity to cross-examine* which negates the claim that the matters testified to by a witness are hearsay**. In the instant case, Rogelio Dahilan, Jr. testified that **accused-appellant indeed told him** where the victim's body can be found.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Two Informations, one for violation of Republic Act No. 6539 (the Anti-Carnapping Law), and the other for Robbery with Homicide, were filed against appellant Marlon dela Cruz (dela Cruz), together with Adriano Melecio (Melecio), Jessie Reyes (Reyes), and Jepoy Obello (Obello) before the Regional Trial Court (RTC) of Dagupan City.

The accusatory portion of the Information in Criminal Case No. 2001-0423-D, for violation of the Anti-Carnapping Law, reads:

That on or about the 4th day of June, 2001, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARLON DELA CRUZ @ Dagul, ADRIANO MELECIO *y* Sendo, JESSIE REYES *y* Evangelista @ Piso and JEPOY OBELLO, with intent to gain and by means of violence or intimidation against persons, confederating, together, acting jointly and helping one another, did then and there, willfully, unlawfully and criminally take, steal, and drive away a Yamaha motorized tricycle with sidecar, belonging to one JULIANA [*sic*] TAMIN, without her knowledge and consent, to the damage and prejudice of the latter.[1]

The accusatory portion of the Information in Criminal Case No. 2001-0424-D, for robbery reads:

That on or about the 4th day of June, 2001, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARLON DELA CRUZ @ Dagul, ADRIANO MELECIO *y* Sendo, JESSIE REYES *y* Evangelista@ Piso and JEPOY OBELLO, with intent to gain and by means of violence or intimidation against persons, confederating together, acting jointly and helping one another, did then and there, willfully, unlawfuly (sic) and criminally, rob one TEOFILO TAMIN SR. of his earnings and cash money in the amount of ₱6,000.00 and drive away his motorized vehicle, and with intent to kill the latter, attack, assault, and use personal violence upon said TEOFILO TAMIN SR. by hitting his head several times, thereby causing his death thereafter due to "intrecranial injury, brain hemorrhage and laceration secondary to depress fracture" as per Autopsy Report and Certificate of Death, both issued by Dr. Benjamin M. Bautista, to the damage and prejudice of the legal heirs of said deceased, TEOFILO TAMIN SR., in the amount of ₱50,000,00.00 (sic) and other consequential damages.[2]

Melecio and Obello have remained at large. Dela Cruz and Reyes, on arraignment, pleaded "not guilty."[3] Reyes was later to be acquitted.

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[1] Records (Criminal Case No. 2001-0423-D), p. 1.

[2] Records (Criminal Case No. 2001-0424-D), p. 1.

[3] Records (Criminal Case No. 2001-0423-D), p. 99.

From the evidence for the prosecution, the following version is gathered:[4]

At 2:00 in the morning of June 4, 2001, Teofilo Tamin Sr. (the victim) was discovered dead beside his "push cart" stall along Perez Boulevard, Dagupan City. A motorized tricycle which the victim and his son jointly owned was missing and which appears to have been parked near the stall, as was the victim's belt bag containing ₱17,000. The missing cash included the amount which was intended to pay for two months amortization of the motorcycle.

Autopsy of the victim yielded the following:

EXTERNAL FINDINGS

Cadaver was in rigor mortis and small body built.

Contusion hematoma, 15x16 cm, left periorbital area and zygomatic area (in front of left ear).

Contusion hematoma, 5x4 cm, mid left parietal area, level 12 cm above the right ear.

Contusion hematoma, 6x5 cm, mid right parietal area, level 6 cm above the right ear.

Contusion hematoma, 14x10 cm, occipital area with depress skull fracture 4x3 cm.

Linear skin abrasion, P shape, 4 cm, left mid clavicular line, level 4.5 cm below the left nipple.

INTERNAL FINDINGS

Intracranial hemorrhage, moderate.

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[4] TSN, October 2, 2001, pp. 2-27; TSN, October 9, 2001, pp. 2-40; TSN, October 12, 2001, pp. 2-15; TSN, October 23, 2001, pp. 2-10; TSN, October 26, 2001, pp. 2-25; TSN, October 30, 2001, pp. 1-15; TSN, November 6, 2001, pp. 2-26; TSN, November 16, 2001, pp. 2-36; RTC records (Criminal Case No. 2001-0423-D), pp. 191-236.

Cerebral hemorrhage, 10x8 cm, left parietal temporal area with laceration.

Cerebral hemorrhage, 10x9 cm, right parietal temporal area with laceration.

Depress skull fracture, 4x3 cm, occipital area.

Cerebellum hemorrhage, 9x6 cm, midline more in right with laceration.

Cause of death: intracranial injury, brain hemorrhage and laceration secondary to depress fracture.

Due to: **mauling**.[5] (Emphasis and underscoring supplied)

Dr. Benjamin Marcial O. Bautista who conducted the autopsy opined that the injuries on the victim's head were caused by the employment of a hard object while the wound on the chest was caused by a sharp instrument.

The Dagupan City police recovered the sidecar attached to the motorcycle a kilometer away from the crime scene at a roadside corner.

From information gathered from bystanders, the police learned that de la Cruz, a notorious thief who had previously been convicted for theft, and an unidentified man were seen riding on a red Yamaha motorcycle on June 4, 2001; that from a surveillance conducted, de la Cruz was not in his Dagupan residence; and that his mother Maria Rosario (Maria) is living in the municipality of San Quintin.

On June 8, 2001, the San Quintin police reported to the Dagupan City police that a red motorcycle was recovered from de la Cruz's mother Maria's house in San Quintin, and that Melecio was apprehended, while de la Cruz[6] and Obello escaped. De

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[5] Exhibit "A", records (Criminal Case No. 2001-0423-D), p. 198.

[6] In a handwritten Return of Warrant of Arrest dated August 21, 2001 records, (Criminal Case No. 2001-0423-D, p. 91), SPO2 Ramon T. Valenterina of the Dagupan City Police Station stated that "subject person (MARLON DELA CRUZ) [is] presently detained" at the Bureau of Jail Management NS Penology (BJMP)."

la Cruz's friends Angelica Perez (Angelica) and Anna Datlag (Anna), who were at the time staying at Maria's house, were invited for questioning.

Anna related to the police, which she echoed at the witness stand, as follows: On June 2, 2001, while she, Angelica, de la Cruz, and Obello were on vacation in Lupao, Nueva Ecija, de la Cruz left for Dagupan City and returned on June 4, 2001 on board a red motorcycle together with Melecio. When she asked where he got the motorcycle, de la Cruz replied that it came from his uncle. Also on June 4, 2001, the group proceeded to de la Cruz's mother Maria's house in San Quintin, with de la Cruz and Angelica on board the motorcycle, while the rest boarded a bus. The group stayed in Maria's house for four days.

Anna further related: On June 6, 2001, she asked de la Cruz who owns the red motorcycle to which he replied that he took it from an old man who was sleeping after he hit the old man with a stone and Melecio stabbed him at the right side of his body, following which they took the money of the old man.

As a result of follow-up investigations, the police invited Reyes for custodial investigation. The police later returned the motorcycle to the victim's wife Julita after she identified it as the one attached to the sidecar of the victim.

Upon the other hand, de la Cruz put up alibi,[7] claiming that he was asleep in his house at Callejon Extension, Dagupan City on the night of January 3, 2001; that on waking up the following day, January 4, 2001, Obello and Melecio arrived and invited him to, as he did join them to San Quintin on board a motorcycle which the two claimed belongs to their uncle; that the group went first to Lupao, Nueva Ecija where they met Anna and Angelica who, on his invitation, joined them in San Quintin where they stayed for a few days.

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[7] TSN, February 19, 2002, pp. 2-23; TSN, February 27, 2002, pp. 2-12; TSN, March 11, 2002, pp. 2-14; TSN, April 12, 2002, pp. 2-10; TSN, April 16, 2002, pp. 2-13.

De la Cruz went on to claim as follows: While they were in San Quintin, Melecio and Obello asked him to look for a buyer of the motorcycle, drawing him and his mother Rosario to scold the two and ask them to go home. The two insisted on staying in San Quintin, however, until they could find a buyer of the motorcycle. The two eventually admitted that they took the motorcycle from an old man whom they had hit. His mother thereupon asked him to send his friends away, which he did, but they refused to leave. Not wanting to be implicated in a crime, he went home to Dagupan on June 7, 2001.

After trial, Branch 43 of the Dagupan City RTC convicted dela Cruz of both charges. As reflected early on, it acquitted Reyes. The trial court disposed:

> WHEREFORE, the Court finds accused MARLON DELA CRUZ *alias* "Dagul" GUILTY beyond reasonable doubt for the felonies of robbery with Homicide AND Violation of R.A. No. 6539 (An act preventing and penalizing carnapping) and in conformity with law, he is sentenced to suffer the penalty of *RECLUSION PERPETUA* in each case.
>
> Accused JESSIE REYES is ordered acquitted on ground of reasonable doubt.
>
> Further, accused is ordered to pay the victim's wife the following to wit:
>
> 1. ₱50,000.00 as indemnity;
> 2. ₱50,000.00 as moral damages;
> 3. ₱30,000.00 as exemplary damages;
> 4. ₱31,234.00 representing funeral/burial miscellaneous expenses;
> 5. ₱17,000.00 representing victim's money intended to pay two (2) months installment of his new motorized tricycle;
>
> Be it stressed that victim's carnapped motorized tricycle was recovered.
>
> The BJMP of Dagupan City is ordered to commit the person of the accused to the National Penitentiary immediately and without unnecessary delay.
>
> SO ORDERED.[8]

[8] Records (Criminal Case No. 2001-0423-D), pp. 311-312.

On appeal before the Court of Appeals, de la Cruz faulted the trial court

I

X X X IN RELYING HEAVILY ON SUPPOSITIONS AND PRESUMPTIONS TO JUSTIFY THE CONVICTION OF ACCUSED-APPELLANT MARLON DELA CRUZ SINCE THERE WAS NO EYEWITNESS TO THE CRIMES COMMITTED AGAINST THE PERSON OF TEOFILO TAMIN, SR.

II

X X X IN BELIEVING THE TESTIMONY OF PROSECUTION WITNESS ANNA DATLAG DESPITE THE REMARKABLE MOTIVE BEHIND HER ACT OF PINNING DOWN ACCUSED-APPELLANT MARLON DELA CRUZ.[9]

III

XXX IN IMPOSING THE PENALTY OF *RECLUSION PERPETUA* FOR EACH CASE.

IV

XXX IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE SANS EVIDENCE TO PROVE THE SAME.[10] (Underscoring supplied)

The Court of Appeals affirmed de la Cruz's conviction, but modified the penalty in light of the following observations:[11]

x x x [T]he trial court erred in imposing the penalty of *reclusion perpetua* in both cases, for the crime of carnapping, considering that the information only alleged that DELA CRUZ committed the crime by means of violence or intimidation against persons and did not allege that the victim was killed in the course of the commission of the carnapping or on occasion thereof. In the same way that recidivism cannot be appreciated against DELA CRUZ notwithstanding his

[9] CA *rollo*, p. 86.

[10] *Id.* at 90.

[11] Decision of June 30, 2006 penned by Court of Appeals Associate Justice Andres B. Reyes, Jr. with the concurrence of Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe. CA *rollo*, pp. 187-208.

admission in court that he was priorly convicted of theft, a crime punished under the same title of the Code as the crime of robbery with homicide, and was just released from Muntinlupa at the time of the trial of the second case. Said aggravating circumstances were not alleged in the information in consonance with the requirement of Section 9, Rule 110 of the Rules of Criminal Procedure.

Also, while the Court acknowledges that certain losses and expenses were actually incurred by the wife of the victim and her family, the Court notes that except for the amount of ₱13,000.00 representing the payment made to Funeraria Dagupan, the other expenses for funeral/burial of the victim were not properly substantiated by receipts. For which reason, We cannot grant the same. The allegation also that the earnings of the day, taken by DELA CRUZ and MELECIO from TEOFILO, SR., amounted to ₱10,000.00 [*sic*] was not sufficiently proven. It is so exuberant [*sic*] considering the nature of the business of the victim at the time the incident occurred. The grant of exemplary damages is also deleted in the absence of aggravating circumstances attending the commission of the crime as alleged in the information.[12] (Underscoring supplied)

The Court of Appeals thus disposed:

WHEREFORE**,** premises considered, finding no error committed by the trial court in arriving at the assailed decision, the same is ***AFFIRMED*** with modifications:

(a) Finding accused-appellant Marlon dela Cruz @ Dagul guilty of robbery with homicide and sentencing him [to] the penalty of *reclusion perpetua*;

(b) Finding accused-appellant Marlon dela Cruz @ Dagul guilty of the crime of carnapping by means of force and violence upon person and sentencing him [to] the indeterminate penalty of imprisonment of 17 years and four months as minimum to 30 years as maximum.

(c) Ordering the accused-appellant Marlon dela Cruz @ Dagul to pay the victim's wife:

(1) ₱50,000 as indemnity;
(2) ₱50,000 as moral damages;

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[12] *Id.* at 205-207.

(3) ₱13,000 as funeral and burial expenses;
(4) ₱7,008 [₱3,504 x 2] representing the two months earnings set aside for the amortization of the vehicle;
(5) ₱20,000 as temperate damages.

SO ORDERED.[13] (Emphasis and italics in the original; underscoring supplied)

Hence, the present appeal of de la Cruz (hereafter appellant).[14]

The appeal is bereft of merit.

There being no eyewitness to the commission of the crime, the following provision of Section 4 of Rule 133 of the Rules of Court on circumstantial evidence applies:

SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Conviction based on circumstantial evidence can be sustained, provided the circumstances proven constitute an unbroken chain which lead to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.[15]

In the cases at bar, the prosecution proved the following facts:

1. Appellant left Lupao, Nueva Ecija for Dagupan on June 2, 2001 and returned to Lupao on June 4, 2001, this time on board a red Yamaha motorcycle;

2. On June 4, 2001, the victim was found dead near his stall, and his money and the tricycle (motorcycle *cum* side car) were missing;

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[13] *Id.* at 207-208.

[14] *Id.* at 209-210.

[15] *People v. Padua*, G.R. No. 169075, February 23, 2007, 516 SCRA 590, 601.

3. The result of the autopsy of the victim showed that, among other things, he had a wound on the head which was opined to have been caused by a hard object;

4. On June 4, 2001, appellant together with his friends, left Lupao for his mother's house at San Quintin. Appellant and his friend Angelica boarded the red Yamaha motorcycle;

5. The sidecar forming part of the tricycle was eventually recovered a kilometer away from the *locus criminis*;

6. Appellant and his friends stayed in his mother's house at San Quintin for four days or up to June 8, 2001 in the course of which appellant confessed to Anna that he took the red Yamaha motorcycle and some money from an old man whom he had hit with a stone and whom Melecio stabbed; and

7. The red Yamaha motorcycle to which the sidecar was attached was recovered on June 8, 2001 from the house of appellant's mother at San Quintin and was returned to the victim's wife Julita after she identified it to be that of the victim's.

Carnapping is "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things."[16]

Robbery with homicide, on the other hand has the following elements:

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 characterized by intent to gain or *animo lucrandi*;

[16] Republic Act No. 6539, Section 2.

4. by reason of the robbery or on occasion thereof, homicide is committed.[17]

From the combination of the above-enumerated proven circumstances, the existence of the elements of carnapping and robbery with homicide, as well as the identity of appellant as the one or one of those who committed the crimes, can be reasonably inferred.

Appellant impugns prosecution witness Anna's testimony about his confession to her as hearsay, however. This Court is not persuaded. Section 33 of Rule 130 of the Rules of Court provides that "[t]he declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him." *People v. Licayan*[18] instructs:

> Accused-appellant cannot validly claim that the statement made by Rogelio "*Jun-jun*" Dahilan, Jr. as to the location of the victim's body is hearsay. Any oral or documentary evidence is **hearsay** by nature *if its probative value* ***is not based on the personal knowledge of the witnesses*** *but on the knowledge of some other person who was never presented on the witness stand*, because it **is the *opportunity to cross-examine* which negates the claim that the matters testified to by a witness are hearsay**. In the instant case, Rogelio Dahilan, Jr. testified that accused-appellant indeed told him where the victim's body can be found.[19] (Italics in the original; emphasis and underscoring supplied)

The records show that appellant cross-examined prosecution witness Anna. Her testimony about appellant's confession to her is not thus hearsay. Such confession is in fact corroborated by the evidence for the prosecution, *viz*: the victim's body bore injuries on the head which the doctor opined to have been caused by a hard object; and the motorcycle was eventually recovered on June 8, 2001 from the house of appellant's mother to which

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[17] *People v. Cabbab, Jr.*, G.R. No. 173479, July 12, 2007, 527 SCRA 589, 604.

[18] 428 Phil. 332 (2002).

[19] *Id.* at 345.

appellant and company repaired to on June 4, 2001[20] and stayed up to June 8, 2001.

Appellant goes on to brand as biased Anna's testimony by "trying to pin [him] . . . in order to save herself." Not only was Anna not charged of complicity in the commission of the crimes, however. She has not been shown to have any motive to testify falsely against him.

Finally, appellant argues that even if the allegation on the loss of some cash were true, the same should be absorbed in carnapping since carnapping and robbery have the same element of taking with intent to gain.[21] The Court is likewise not persuaded. Carnapping refers specifically to the taking of a motor vehicle. It does not cover the taking of the cash or personal property which is not a motor vehicle. As the Court of Appeals noted,

> x x x Two (2) articles were taken from TEOFILLO, SR., his tricycle and some cash. The taking of the tricycle constitutes a violation of the anti-carnapping law, RA 6539, while the taking of the cash from TEOFILO, SR. by hitting him with a stone and stabbing him in the chest constitutes the crime of robbery with homicide under Article 294 of the Revised Penal Code.[22]

WHEREFORE, the challenged June 30, 2006 Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

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

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[20] *Vide* RULES OF COURT, Rule 133, Section 3: "An extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*."

[21] CA *rollo,* p. 93.

[22] *Id.* at 203.

** Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga's sabbatical leave.

SECOND DIVISION

[G.R. No. 175238. February 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELMER BALDO *y* SANTAIN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS. — For conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. REMEDIAL LAW; EVIDENCE; SWEETHEART THEORY OR SWEETHEART DEFENSE IN RAPE CASES; TO BE GIVEN CREDENCE, THE DEFENSE MUST BE PROVEN BY COMPELLING EVIDENCE. — The "sweetheart theory" or "sweetheart defense" is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests our patience. For the Court to even consider giving credence to such defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs. There is none presented here by the defense. Moreover, even if it were true that they were sweethearts, a love affair does not justify rape. As wisely ruled in a previous case, a man does not have the unbridled license to subject his beloved to his carnal desires.

3. CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; MUST BE VIEWED IN THE LIGHT OF THE VICTIM'S PERCEPTION AND JUDGMENT AT THE TIME OF THE COMMISSION OF THE CRIME. — AAA's failure to shout or to tenaciously resist appellant should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to appellant's criminal act. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in our

> jurisprudence, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point. In this case, the presence of a fan knife on hand or by his side speaks loudly of appellant's use of violence, or force and intimidation.

APPEARANCES OF COUNSEL

The Solicitor General for appellant.
Public attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated July 4, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01930, which affirmed the Decision[2] of the Regional Trial Court of Antipolo City, Branch 73 in Criminal Case Nos. 00-18080 to 00-18082, convicting and sentencing appellant Elmer S. Baldo to *reclusion perpetua* for the crime of rape.

On February 17, 2000, three Informations for rape were filed against appellant and were docketed as Criminal Case Nos. 00-18080 to 00-18082. Except for the dates, all three informations were similarly worded as follows:

That on or about the 10th day of February 2000 in the City of Antipolo, Philippines and within the jurisdiction of this Honorable

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[1] CA *rollo*, pp. 116-124. Penned by Associate Justice Marina L. Buzon, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring.

[2] Dated September 26, 2002. Records, pp. 115-124. Penned by Executive Judge Mauricio M. Rivera.

Court, the above-named accused, while armed with a fan knife, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one [AAA],[3] against her will and consent.

CONTRARY TO LAW.[4]

Upon arraignment on March 16, 2000, appellant pleaded not guilty to the three charges.[5] Trial on the merits thereafter ensued.

The facts as established by the prosecution are as follows:

Twenty-nine-year-old AAA, appellant, and Norman Echani were housemates in a small one-room house in *Purok Maligaya* II, Mambugan, Antipolo City. Appellant is her nephew while Echani is her cousin. As AAA recently resigned from her job and appellant worked during the night shift in a factory, the two were always left during daytime when Echani was at work.

On February 10, 2000 at 1:00 p.m., appellant professed his love for AAA in their living room. She, however, admonished him against his protestation for they are relatives. He then told her that if she ignores him, he would rape her. She pleaded to him not to do anything against her will if he really liked her. Appellant then held her left hand and poked a *balisong* (fan knife) at her, and then removed her pants and panty while she was seated at a bench. Then he dragged her and laid her on the floor, removed his shorts and brief, and placed himself on top of her. AAA tried to resist by kicking him but he was stronger. Thereafter he placed the knife aside, then held and pressed

[3] This appellation is pursuant to Republic Act No. 9262, Sec. 44, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004" and our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] *Id.* at 1, 13 and 27.

[5] *Id.* at 45.

her thighs. He then fingered her vagina with his right hand and inserted his penis into it. After two minutes, appellant stood up but threatened to kill her if she reported the incident to their relatives. As she was in shock, AAA just stayed in her room. Appellant thereafter left for work at 5:30 p.m.

According to AAA, appellant repeated his beastly act the following day, February 11 and on the next day, February 12, 2000.

In the evening of February 12, 2000, AAA decided to tell Echani what appellant had done to her. Echani and his brother, Abraham, then accompanied her to the *barangay* hall to file complaints against appellant.

The medico-legal police officer who examined AAA on February 13, 2000 found "deep healing laceration" in her hymen, "compatible with recent loss of virginity" but negative for spermatozoa.[6] Dr. James Belgira testified that the laceration could have been caused by a penetration of a hard object like an erect penis. He also found contusions on AAA's left arm and thighs.[7]

Appellant, in his own defense, denied the charges against him. He claimed that he and AAA were lovers since November 1999, and that she had consented to have sex with him even prior to February 2000. He contended that she charged him because her parents were against their affair, and that her parents learned of their relationship because two of their neighbors saw them having sexual intercourse. He likewise denied poking a knife at her when they "made love." To prove they are lovers, appellant presented two witnesses: Benjamin Eubra, *Purok Maligaya* Chairman, and Simeon de los Santos, appellant's uncle and neighbor.

Eubra and De los Santos testified that appellant and AAA were always together and held hands when walking. Being part of the *barangay* investigating team, Eubra said that the

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[6] Records, p. 133.

[7] *Id.* at 136-137. TSN, June 28, 2000, p. 14.

crime scene is a single-room house separated from adjacent houses by plywood and located in a place where market people usually hang out. He did not believe the charges because the neighbors could always see and hear what the occupants inside the house were doing.[8]

On September 26, 2002, the trial court found appellant guilty in Criminal Case No. 00-18080 but acquitted him in Criminal Case Nos. 00-18081 and 00-18082. The *fallo* reads as follows:

> WHEREFORE, premises considered, accused ELMER BALDO *y* SANTAIN is hereby found guilty of rape beyond reasonable doubt in Criminal Case No. 00-18080 and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> He is further ordered to pay to the complainant, [AAA], the amount of Php 50,000 as indemnity.
>
> Criminal Cases No[s]. 00-18081 and 00-18082 are hereby DISMISSED for insufficiency of evidence.
>
> SO ORDERED.[9]

Since the penalty imposed on appellant is *reclusion perpetua*, the case was elevated to this Court for automatic review. Pursuant to *People v. Mateo*,[10] however, we referred the case to the Court of Appeals.

On July 4, 2006, the appellate court affirmed with modification the trial court's decision. Its *fallo* reads:

> *WHEREFORE*, the Decision appealed from is ***AFFIRMED***, with ***MODIFICATION*** by ordering accused-appellant Elmer Baldo *y* Santain to likewise pay [AAA] the amount of ₱50,000.00 as moral damages and the amount of ₱25,000.00 as exemplary damages.
>
> *SO ORDERED*.[11]

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[8] TSN, August 15, 2001, p. 15. TSN, December 5, 2001, pp. 13-14, 16.

[9] Records, pp. 123-124.

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

[11] CA *rollo*, p. 123.

Hence this instant petition based on a lone assignment of error:

THE COURT *A QUO* ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN [PROVEN] BEYOND REASONABLE DOUBT.[12]

The issue to be resolved in the instant case is whether the crime of rape, particularly the element of force or intimidation, has been proved sufficiently.

Appellant insists that he and AAA are lovers and what happened between them was consensual. He likewise capitalizes on AAA's admission that he was no longer holding the knife when he inserted his finger and subsequently his penis into AAA's vagina. Thus, she had all the opportunity to resist his alleged sexual assault. Appellant further claims that AAA's failure to make an outcry to call the attention of their neighbors, as the partition between the rooms was only made of plywood, and to immediately disclose the incident to her cousin Echani, showed she consented to the sexual congresses. As he was not covering her mouth, she should have made her protestations in a voice loud enough for others to hear.

The Office of the Solicitor General (OSG) counters that findings of fact of the trial court deserve respect and that witnesses are usually reluctant to volunteer information. It stresses that the elements of simple rape, to wit, carnal knowledge and force or intimidation, were proven during trial. Even granting that appellant and AAA were lovers, such fact was not a valid defense as a man cannot force his sweetheart to have sexual intercourse with him. The OSG adds that AAA's account evinced sincerity and truthfulness and she never wavered in her story, consistently pointing to appellant as her rapist. Besides, no woman would willingly submit herself to the rigors, humiliation and stigma attendant in a rape case if she was not motivated by an earnest desire to punish the culprit.

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[12] *Id*. at 39.

In our considered view, the prosecution has proven all the elements of the offense of simple rape, including the use of force or intimidation. We affirm appellant's conviction.

For conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[13]

In this case, the presence of the first element is undisputed since appellant admits his sexual congress with complainant. While making such admission however, he contends that there is no force or intimidation to speak of as it was consensual. Appellant alleges that AAA willingly participated in the sexual act because they are lovers. He even presented two witnesses to corroborate his claim. Their testimony, however, leaves us unconvinced of appellant's alleged innocence.

The "sweetheart theory" or "sweetheart defense" is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests our patience.[14] For the Court to even consider giving credence to such defense, it must be proven by compelling evidence.[15] The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs.[16] There is none presented here by the defense.

Moreover, even if it were true that they were sweethearts, a love affair does not justify rape. As wisely ruled in a previous

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[13] Revised Penal Code, Art. 266-A as amended by Rep. Act No. 8353; *People v. Barangan*, G.R. No. 175480, October 2, 2007, 534 SCRA 570, 592.

[14] *People v. Barangan*, *id.* at 593.

[15] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 84.

[16] *People v. Batiancila*, G.R. No. 174280, January 30, 2007, 513 SCRA 434, 444.

case, a man does not have the unbridled license to subject his beloved to his carnal desires.[17]

In a desperate attempt to prove the alleged consensual nature of the sexual intercourse, appellant capitalizes on AAA's failure to offer resolute resistance despite the fact that he was no longer holding the knife while consummating the sexual act. Appellant also points to AAA's failure to shout or make an outcry so that their neighbors can come to her rescue.

AAA's failure to shout or to tenaciously resist appellant should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to appellant's criminal act.[18] In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in our jurisprudence, not all victims react the same way.[19] Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion.[20] Some may offer strong resistance while others may be too intimidated to offer any resistance at all.[21] Moreover, resistance is not an element of rape.[22] A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her.[23] As long as the force or

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[17] *People v. Barangan*, *supra* at 594.

[18] *People v. Calongui*, *supra* at 85; *People v. Dadulla*, G.R. No. 175946, March 23, 2007, 519 SCRA 48, 58-59.

[19] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771; *People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140, 145.

[20] *People v. Ilao*, G.R. Nos. 152683-84, December 11, 2003, 418 SCRA 391, 400.

[21] *People v. Fernandez*, G.R. No. 172118, April 24, 2007, 522 SCRA 189, 203; *People v. Batiancila*, *supra* at 443.

[22] *People v. Durano*, G.R. No. 175316, March 28, 2007, 519 SCRA 466, 480.

[23] *People v. Balonzo*, *supra* at 770.

intimidation is present, whether it was more or less irresistible is beside the point.[24] In this case, the presence of a fan knife on hand or by his side speaks loudly of appellant's use of violence, or force and intimidation.

As to the civil indemnity and damages, the trial court, as affirmed by the appellate court, correctly awarded ₱50,000 civil indemnity and ₱50,000 moral damages in line with prevailing jurisprudence.[25] Likewise, the award of ₱25,000 exemplary damages due to the presence of the aggravating circumstance of use of a deadly weapon (fan knife) is proper.[26]

WHEREFORE, the Decision dated July 4, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01930 is *AFFIRMED*.

SO ORDERED.

Carpio Morales, Nachura,[*] *Brion,* and *Peralta,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 177752. February 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROBERTO ABAY *y* TRINIDAD,** *appellant.*

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[24] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.

[25] *People v. Natan*, G.R. No. 181086, July 23, 2008, pp. 1, 6-7.

[26] *People v. Barangan*, *supra* at 596.

[*] Additional member in lieu of Associate Justice Dante O. Tinga who is on sabbatical leave.

[**] Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. who is abroad on official business.

SYLLABUS

1. CRIMINAL LAW; SEXUAL ABUSE UNDER SECTION 5(B) OF REPUBLIC ACT 7610, STATUTORY RAPE UNDER ARTICLE 266-A(1)(D) OF THE REVISED PENAL CODE AND RAPE UNDER ARTICLE 266-A (EXCEPT PARAGRAPH 1(D) OF THE REVISED PENAL CODE; APPLICABILITY. — Under Section 5(b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the Revised Penal Code and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.

2. ID.; RAPE; RAPE UNDER ARTICLE 266-A(1)(A) OF THE REVISED PENAL CODE; ESTABLISHED IN CASE AT BAR. — In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established. Indeed, the records are replete with evidence establishing that appellant forced AAA to engage in sexual intercourse with him on December 25, 1999. Appellant is therefore found guilty of rape under Article 266-A(1)(a) of the Revised Penal Code and sentenced to *reclusion perpetua.*

3. ID.; ID.; PENALTY; CIVIL INDEMNITY *EX-DELICTO* AND MORAL DAMAGES, AWARDED IN CASE AT BAR. — To conform with existing jurisprudence, appellant is ordered to pay AAA ₱75,000 as civil indemnity *ex-delicto* and ₱75,000 as moral damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

On March 8, 2000, appellant Roberto Abay *y* Trinidad was charged with rape in relation to Section 5(b), Article III of RA 7610 in the Regional Trial Court (RTC) of Manila, Branch 4[1] under the following Information:

> That sometime in December 1999, in the City of Manila, Philippines, [appellant] by means of force and intimidation, did then and there willfully, unlawfully and knowingly commit sexual abuse and lascivious conduct against [AAA], a minor, 13 years of age, by then and there kissing her breast and whole body, lying on top of her and inserting his penis into her vagina, thus succeeded in having carnal knowledge of her, against her will and consent thereafter threatening to kill her should she report the incident, thereby gravely endangering her survival and normal growth and development, to the damage and prejudice of [AAA].
>
> CONTRARY TO LAW.

Appellant pleaded not guilty during arraignment.

During trial, the prosecution presented AAA, her mother BBB and expert witness Dr. Stella Guerrero-Manalo of the Child Protection Unit of the Philippine General Hospital as its witnesses.

[1] Docketed as Criminal Case No. 00182097.

AAA testified that appellant, her mother's live-in partner, had been sexually abusing her since she was seven years old. Whenever her mother was working or was asleep in the evening, appellant would threaten her with a bladed instrument[2] and force her to undress and engage in sexual intercourse with him.

BBB corroborated AAA's testimony. She testified that she knew about appellant's dastardly acts. However, because he would beat her up and accuse AAA of lying whenever she confronted him, she kept her silence. Thus, when she caught appellant in the act of molesting her daughter on December 25, 1999, she immediately proceeded to the police station and reported the incident.

According to Dr. Guerrero-Manalo, AAA confided to her that appellant had been sexually abusing her for six years. This was confirmed by AAA's physical examination indicating prior and recent penetration injuries.

The defense, on the other hand, asserted the incredibility of the charge against appellant. Appellant's sister, Nenita Abay, and appellant's daughter, Rizza, testified that if appellant had really been sexually abusing AAA, the family would have noticed. The rooms of their house were divided only by ¼-inch thick plywood "walls" that did not even reach the ceiling. Thus, they should have heard AAA's cries. Moreover, Nenita and Rizza claimed that they "often caught" AAA and her boyfriend in intimate situations.

According to the RTC, one wrongly accused of a crime will staunchly defend his innocence. Here, appellant kept his silence which was contrary to human nature. On the other hand, AAA straightforwardly narrated her horrifying experience at the hands of appellant. The RTC concluded that appellant had indeed sexually abused AAA. A young girl would not have exposed herself to humiliation and public scandal unless she was impelled by a strong desire to seek justice.[3]

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[2] The nature of the bladed weapon was not specified in the records.

[3] Citing *People v. Arves*, 397 Phil. 137, 148 (2000).

In a decision dated November 25, 2003,[4] the RTC found appellant guilty beyond reasonable doubt of the crime of rape:

> WHEREFORE, finding [appellant] Roberto Abay *y* Trinidad guilty beyond reasonable doubt of committing the crime of rape under Article 335 of the Revised Penal Code in relation to Section 5, Article III of RA 7610 against [AAA], the Court imposes upon him the death penalty,[5] and to pay private complainant moral damages in the amount of Fifty Thousand (₱50,000) Pesos.
>
> SO ORDERED.

The Court of Appeals (CA), on intermediate appellate review,[6] affirmed the findings of the RTC but modified the penalty and award of damages.

In view of the enactment of RA 8353[7] and RA 9346,[8] the CA found appellant guilty only of simple rape and reduced the penalty imposed to *reclusion perpetua.* Furthermore, in addition to the civil indemnity *ex delicto* (which is mandatory once the fact of rape is proved)[9] granted by the RTC, it awarded ₱50,000 as moral damages and ₱25,000 as exemplary damages. Moral damages are automatically granted in rape cases without need of proof other than the commission of the crime[10] while exemplary damages are awarded by way of example and in order to protect young girls from sexual abuse and exploitation.[11]

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[4] Penned by Judge Socorro B. Inting. *CA rollo,* pp. 15-21.

[5] The imposition of the death penalty was prohibited by RA 9346 which took effect on June 30, 2006.

[6] Docketed as CA-G.R. CR-H.C. No. 01365.

[7] ANTI-RAPE LAW OF 1997.

[8] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[9] *People v. Talavera,* 461 Phil. 883, 891 (2003).

[10] *People v. Alvarez,* 461 Phil. 188, 209 (2003).

[11] Decision penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Rodrigo V. Cosico (retired) and Lucas P. Bersamin. Dated January 18, 2007. *Rollo,* pp. 3-11.

We affirm the decision of the CA with modifications.

Under Section 5(b), Article III of RA 7610[12] in relation to RA 8353,[13] if the victim of sexual abuse[14] is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the Revised Penal Code[15] and penalized with *reclusion*

[12] RA 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Art. III, Sec. 5(b) provides:

Section 5. *Child Prostitution and Other Sexual Abuse.* x x x

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided,* **That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape** and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years old shall be *reclusion temporal* in its medium period; (emphasis supplied)

x x x x x x x x x

[13] RA 8353 (which took effect on October 22, 1997) reclassified rape as a crime against person and repealed Article 335 of the Revised Penal Code. The new provisions on rape are found in Articles 266-A to 266-D of the said code.

Article 335, paragraph 3 is now Article 266-A(1)(d) of the Revised Penal Code.

[14] Sexual abuse includes coercing a child to engage in sexual intercourse or lascivious conduct. See Rules and Regulation on the Reporting and Investigation of Child Abuse Cases, Sec. 2(g) cited in *People v. Malto,* G.R. No. 164733, 21 September 2007, 533 SCRA 643, 659.

[15] REVISED PENAL CODE, Art. 266-A. *Rape; When And How Committed.* — Rape is Committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a. Through force, threat, or intimidation;
   b. When the offended party is deprived of reason or otherwise unconscious;

perpetua.[16] On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse[17] under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes[18] for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act.[19] Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes),[20] a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.[21]

In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant

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c. By means of fraudulent machination or grave abuse of authority; and

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (emphasis supplied)

[16] REVISED PENAL CODE, Art. 266-B. *Penalties.*—Rape under paragraph 1 of [Art. 266-A] shall be punished by *reclusion perpetua*.

x x x x x x x x x

[17] Sexual intercourse with a child subjected to abuse.

[18] See *People v. Optana,* 404 Phil. 316 (2001).

[19] See CONSTITUTION, Art. III, Sec. 21 which provides:

Section 21. No person shall be put twice in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

[20] Under Article 48 of the Revised Penal Code, there are two kinds of complex crimes: one, a single act that constitutes two or more grave or less grave felonies and two, an offense is a necessary means for committing another.

[21] See *People v. Araneta,* 48 Phil. 650 (1926).

stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation[22] by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.[23]

Indeed, the records are replete with evidence establishing that appellant forced AAA to engage in sexual intercourse with him on December 25, 1999. Appellant is therefore found guilty of rape under Article 266-A(1)(a) of the Revised Penal Code and sentenced to *reclusion perpetua*. Furthermore, to conform with existing jurisprudence, he is ordered to pay AAA ₱75,000 as civil indemnity *ex-delicto*[24] and ₱75,000 as moral damages.[25]

WHEREFORE, the January 18, 2007 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01365 is hereby *AFFIRMED WITH MODIFICATION*. Appellant Roberto Abay y Trinidad is hereby found *GUIILTY* of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA ₱75,000 as civil indemnity *ex-delicto,* ₱75,000 as moral damages and ₱25,000 as exemplary damages.

Costs against appellant.

SO ORDERED.

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

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[22] In contrast, Section 5(b) of RA 7610 requires coercion or influence.

[23] While BBB testified that AAA was more than 12 years old at the time the offense was committed, her exact age was not proven.

[24] *People v. Pioquinto,* G.R. No. 168326, 11 April 2007, 520 SCRA 712, 724.

[25] *People v. Balonzo,* G.R. No. 176153, 21 September 2007, 533 SCRA 760, 775.

* Per Special Order No. 570 dated February 12, 2009.

EN BANC

[A.M. No. P-07-2392. February 25, 2009]
(Formerly OCA IPI No. 07-2579-P)

ROSALINDA C. AGUILAR, *complainant, vs.* **RONBERTO B. VALINO, Deputy Sheriff, Regional Trial Court, Branch 70, Pasig City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN ADMINISTRATIVE PROCEEDINGS, THE BURDEN OF PROVING, BY SUBSTANTIAL EVIDENCE, THE TRUTHFULNESS OF THE ALLEGATIONS ON THE COMPLAINT RESTS ON THE COMPLAINANT. — It is basic that in administrative proceedings, the burden of proving, by substantial evidence, the truthfulness of the allegations on the complaint rests on the complainant. Only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, is required.

2. ID.; ID.; CREDIBILITY OF WITNESSES; EVALUATION THEREOF BY THE INVESTIGATING JUDGE IS ACCORDED DUE RESPECT AND EVEN FINALITY BY THE SUPREME COURT. — As a rule, the evaluation by the Investigating Judge of the credibility of witnesses is accorded due respect, even finality, by this Court since the Judge was in a better position to pass judgment on the same, having personally heard them when they testified and observed their deportment and manner of testifying. Considering that the conclusion of the Investigating Judge is supported by the records, the Court finds no reason to depart from said rule.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; EXPLAINED. — Misconduct, as defined, was an unacceptable behavior that transgresses the established rules of conduct for public officers. To be considered as grave and to warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must

imply wrongful intention and not a mere error of judgment and must have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or to willful, intentional neglect or failure to discharge the duties of the office. There should also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law.

4. ID.; ID.; ID.; DISHONESTY; DEFINED. — [D]ishonesty x x x is defined as the disposition to lie, cheat, deceive, or defraud; unworthiness; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

5. ID.; ID.; ID.; GRAVE MISCONDUCT AND DISHONESTY; NATURE AND PENALTY. — Both grave misconduct and dishonesty are grave offenses which are punishable by dismissal even for the first offense. It is also provided in the Uniform Rules on Administrative Cases in the Civil Service that if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.

6. ID.; ID.; ID.; COURT PERSONNEL; RESPONSIBLE IN INSURING THAT THEIR CONDUCT IS ALWAYS BEYOND REPROACH. — The Court has always held that court personnel charged with the dispensation of justice, from the presiding judge to the lowliest clerk, bear a heavy responsibility in insuring that their conduct is always beyond reproach. The preservation of the integrity of the judicial process is of utmost importance; thus, all those occupying office in the judiciary should at all times be aware that they are accountable to the people. They must serve with utmost responsibility, integrity, loyalty, and efficiency and must always conduct themselves with the highest degree of propriety and decorum and take utmost care in avoiding incidents that degrade the judiciary and diminish the respect and regard for the courts.

7. ID.; ID.; ID.; ID.; SHERIFFS; SHOULD DISCHARGE THEIR DUTIES WITH DUE CARE AND UTMOST DILIGENCE AND TO BE ABOVE SUSPICION. — Sheriffs in particular are ranking officers of the court. They play an important part in the administration of justice. In view of their exalted position as keepers of the public faith, it is imperative that their conduct be geared towards

maintaining the prestige and integrity of the court. By the very nature of their functions, sheriffs are called upon to discharge their duties with due care and utmost diligence and, above all, to be above suspicion.

R E S O L U T I O N

***PER CURIAM*:**

Rosalinda C. Aguilar (complainant) charged Ronberto B. Valino (respondent), Deputy Sheriff IV of the Regional Trial Court (RTC), Branch 70 of Pasig City, of grave misconduct and dishonesty.

In a letter to the Court dated March 12, 2007, complainant averred: A decision was rendered by the Court of Appeals (CA), ordering her to pay Victoria Lee (Lee) ₱866,828.90.[1] On February 13, 2007, she filed an Urgent Verified Omnibus Motion seeking to enjoin the public auction to be conducted by respondent the following day on her real properties.[2] The motion was set for hearing on February 14, 2007. On said date, Judge Lorifel Lacap Pahimna (Judge Pahimna) issued an Order directing respondent to stop the scheduled auction until further orders from the court. Pertinent portions of the Order read:

Yesterday, the court verbally instructed the Sheriff of this branch, Ronberto B. Valino, through the court interpreter to report for work today at 8:00 o'clock in the morning to answer some clarificatory questions pertaining to the writ of execution dated November 27, 2006. It couldn't conduct immediate query yesterday because he left the office after lunch and did not return for work that same day.

For reasons initially unknown to this court, a representative just hand[ed] over this morning a copy of the Sheriff's Report dated February 12, 2007 but Mr. Valino himself failed to report to this court as instructed.

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[1] The RTC Branch 70 decision dated April 12, 2005 ordered her to pay Lee the amount of ₱2,366,829.20 plus ₱50,000.00 attorney's fees, which amount was reduced by the Court of Appeals however to ₱866,828.90 plus interest, upon appeal.

[2] Covered by TCT Nos. 349195 and 340298.

Later, the court was informed that Mr. Valino will proceed to the auction venue.

Accordingly, Sheriff Ronberto B. Valino is hereby directed to show cause within seventy-two (72) hours from notice why he should not be cited in contempt and administratively charged for insubordination for failure to comply with the verbal order of the court before he proceeds to the auction venue.

Further, he is directed to explain within the same period why he has not complied with Section 14, Rule 39 of the Rules of Court, relative to submission of a periodic report on the writ of execution.

Considering the pendency of an Urgent Omnibus Motion and the need to thresh out some issues in said motion and for failure of the Branch Sheriff to appear as verbally directed by the Court, the Court hereby orders the Sheriff to STOP the scheduled auction sale of the property at 10:00 o'clock in the morning today until further orders from the Court and the resolution on the pending incident.[3]

Judge Pahimna then instructed Process Server Sonny B. Reyes (Reyes) to serve a copy of the Order to respondent and to verify whether or not an auction sale would be conducted. Reyes arrived around 9:55 in the morning at the auction venue where he met Court Stenographer Liza Galvez (Galvez) of Branch 73, who was also instructed by Judge Pahimna to look for respondent. Reyes waited until 12:30 in the afternoon, but respondent did not arrive and no auction was held that day between 9:55 in the morning and 12:30 in the afternoon. To complainant's surprise, however, a Certificate of Sale was issued by respondent in favor of a certain Hector Lee Yu over the two parcels of land, in the amount of ₱6,680,500.00, during an alleged auction sale held on February 14, 2007 at 10:00 a.m. in front of the Municipal Building of Pateros.[4]

In his Comment dated April 23, 2007, respondent denied the charges against him and claimed that: he was not aware of the Urgent Verified Omnibus Motion filed by complainant which was set for hearing for February 14, 2007; he had to go home

[3] *Rollo*, pp. 6-7.

[4] *Rollo*, pp. 7-8.

at around noon of February 13 because of stomach pain; in the afternoon and evening of that day, he did not receive any instruction from any staff of Branch 70; in the morning of February 14, he proceeded directly to Pateros City Hall where the auction was to be conducted; there he met Lee and at 10:00 o'clock in the morning the auction took place with the son of Lee as the only bidder who offered a written bid on the property. Respondent further claimed that the accusations were purely intended to harass him, because he did not succumb to complainant's attempt to bribe him in consideration of his deferring the auction sale. He also denied the allegations of Reyes and Galvez and questioned the interest in the case of Judge Pahimna, who issued the order dated February 14, 2007 in haste, without due process and without requiring the complainant to post a bond as required by the Rules of Court. He further averred that he had been a sheriff for 16 years and was never accused of any wrongdoing in the performance of his duties.[5]

On October 15, 2007, the Court issued a Resolution redocketing the instant case as a regular administrative matter and referred the same to the Executive Judge of RTC, Pasig City for investigation, report and recommendation.[6]

In her Compliance dated February 1, 2008, Executive Judge Amelia C. Manalastas found respondent guilty of grave misconduct and recommended that he be suspended and admonished. She noted that during the hearing, she gave respondent the opportunity to confront the witnesses against him; however, respondent did not make any comment and offered only bare denials in the face of complainant's positive documentary and testimonial evidence.[7]

In the Resolution dated March 19, 2008, the Court referred the case to the Office of the Court Administrator (OCA) for its evaluation, report and recommendation.[8]

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[5] *Id.* at 49-53.

[6] *Rollo*, p. 54.

[7] *Id.* at 155-156.

[8] *Id.* at 158.

The OCA in its Report[9] dated August 29, 2008, then held that:

> [r]espondent's introduction in evidence of the falsified Certificate of Sale purporting that an auction sale was actually conducted, although in fact it was not, shows an intent to disregard flagrantly the law and constitutes grave misconduct that corrodes respect for the courts. The same likewise indicates a predisposition to lie and deceive and amounts to dishonesty. x x x[10]

The OCA gave weight to the finding of the investigating judge that complainant's witnesses were more credible. All of complainant's seven witnesses categorically denied the conduct of public auction at 10 o'clock in the morning of February 14, 2007 in front of the Municipal Hall of Pateros, while respondent and his witness could hardly articulate in detail how the auction was carried out. Complainant's witnesses did not have any ill motive in testifying against respondent, while respondent's lone witness was a driver of the defendant in the civil case.[11] Finding respondent guilty of grave misconduct, the OCA recommended his dismissal from the service with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned and controlled corporations.[12]

The Court finds the report and recommendation of the OCA to be proper.

It is basic that in administrative proceedings, the burden of proving, by substantial evidence, the truthfulness of the allegations on the complaint rests on the complainant.[13] Only substantial evidence, or that amount of relevant evidence which a reasonable

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[9] Through Court Administrator Jose P. Perez.

[10] *Rollo*, p. 184.

[11] *Id.* at 182-183.

[12] *Rollo*, pp. 181, 184-185.

[13] *Badoles-Algodon v. Zaldivar*, A.M. No. P-04-1818, August 3, 2006, 497 SCRA 446.

mind might accept as adequate to support a conclusion, is required.[14] In this case, the Court finds that complainant was able to satisfactorily discharge such burden.

Complainant, with her seven witnesses who were all court employees, was able to show that no auction actually took place on February 14, 2007 at the Pateros Municipal Hall, as purported by respondent.

Reyes, affirming the contents of his Process Server's Return, testified before the Investigating Judge that: he arrived at the Pateros Municipal Hall before 10:00 o'clock in the morning and there met Galvez who said that she had not seen respondent; they asked the guard if there was an auction scheduled for 10:00 o'clock in the morning, and the latter answered in the negative; they also found out that there was no notice for an auction at the time posted in the area; he waited at the lobby until 12 noon and, upon failing to see respondent or any party, Reyes called Judge Pahimna to ask if he could already leave the place.[15]

Galvez also testified that Judge Pahimna called her at 9:40 in the morning, instructing her to go to the entrance of the Municipal Hall of Pateros; that she asked the Building Custodian and the policeman stationed at the hall if a certain Sheriff Valino approached them regarding an auction sale to be held that 10:00 o'clock in the morning, to which they answered in the negative; then she received another call from Judge Pahimna telling her to meet Reyes.[16]

Building Custodian Ben Hernandez (Hernandez) likewise testified that on February 14, he was at his desk in front of the lobby from 8:00 o'clock in the morning to 12:00 noon, and there was no auction conducted; he had not seen respondent before,

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[14] *Aranda, Jr. v. Alvarez*, A.M. No. P-04-1889, November 23, 2007, 538 SCRA 162.

[15] *Rollo*, pp. 102-107.

[16] *Rollo*, pp. 111-114.

and it was only during the investigation that he saw respondent for the first time.[17]

To these, respondent merely claimed that the reason Reyes did not see him was probably because there were so many people at the municipal hall at that time, as there was a job fair,[18] and that he saw Hernandez that day, but Hernandez' table was far from the entrance and near the stairs.[19] Reyes insisted, however, that he knew respondent and would have found him even in a crowd.[20] While Hernandez maintained that it was impossible for him not to see if an auction was conducted at that place, since he was alert to the goings-on in said place and if there were people gathered, since it was his job to be aware of such activities as building custodian.[21]

Rolando Alejandro, (Alejandro) a Collector at the Treasurer's Office, affirmed his affidavit dated March 7, 2007 before the Investigating Judge and testified that although he signed as a witness to the auction sale which purportedly took place at 10 o'clock in the morning of February 14, 2007 at the main entrance of the Municipal Hall of Pateros, the truth was that he was never a witness to such auction, as he was in fact absent that day as reflected in his Daily Time Record.[22] He explained that on February 15 or 16, 2007 at around 2 o'clock to 3 o'clock in the afternoon, a woman approached him at their office and asked him to sign a document, which he signed not knowing what it was all about. When asked by Galvez on March 5, 2007, it was only then that he realized that he was made to sign a document as a witness to an auction sale.[23]

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[17] *Id.* at 114-120.

[18] *Id.* at 108-109.

[19] *Id.* at 121.

[20] *Id.* at 110.

[21] *Id.* at 123.

[22] *Id.* at 72, 91, 128, 131.

[23] *Rollo*, p. 126, TSN, January 14, 2008.

When asked by the Investigating Judge why he signed the document not knowing what it was about, he answered that at the time the woman approached him, he was in a hurry as he was on his way to the comfort room to relieve himself.[24] Alejandro also testified that he did not know respondent or was not even familiar with his name; and that it was the first time, during the investigation, that he saw him.[25] He claimed further that the woman who asked him to sign the document went back to him after he executed his March 7 affidavit and asked him to affirm that he really witnessed the auction sale in exchange for ₱10,000.00, a ₱500 cell phone load and an authority to handle one of her computer shops, which he declined.[26]

When the Investigating Judge asked respondent what he could say to Alejandro's testimony, respondent's only response, however, was:

SHERIFF VALINO:
No comment.

COURT:
Mr. Valino *hindi mo sya tatanungin, hindi mo sya iko*-confront?

SHERIFF VALINO:
Hindi na po.[27]

Court Interpreter Rachel de Guzman also testified that she texted respondent in the afternoon of February 13, 2007 to report for work before 8:00 o'clock the following morning, to which the latter agreed.[28] Branch Clerk of Court Atty. Ma. Cielo Paz Alba-Celera also testified that upon instruction of Judge Pahimna, she tried to contact respondent on February

[24] *Id.* at 126, TSN, January 14, 2008.

[25] *Id.* at 127.

[26] *Id.* at 128-131.

[27] *Id.* at 132.

[28] *Rollo*, pp. 75, 95-96, TSN of Rachel G. de Guzman.

14 several times through his cellular phone, but it was turned off. She also tried to call him days after the auction, but he did not report for work on February 15, 16, 19 and 20. And while he reported for work on February 21, he left the office at 11:30 in the morning without informing her.[29] Court Stenographer Portia S. Paguntalan stated that she finished typing Judge Pahimna's order directing respondent to stop the scheduled auction on or about 9:30 in the morning and immediately gave the same to Judge Pahimna for her signature.[30]

Respondent for his part merely denied the allegations of the witnesses and was adamant in his claim that an auction actually took place at the time and place stated on the certificate of sale.

When asked by the Investigating Judge, however, why he did not report for one week after the alleged auction sale, respondent only said that he had a flu.[31] The Investigating Judge also noted that respondent did not give complainant a computation of how much she was supposed to pay before the auction.[32] And when the Investigating Judge asked respondent why he sold the property at ₱6 million when the amount payable, as ruled by the CA, was only ₱866,000.00 plus interest, respondent only said that he based his computation on the decision of the trial court. He admitted, though, that he was aware of the CA Decision, rendered almost a year before the auction, modifying that of the RTC.[33]

Respondent presented his witness, Rainer V. Galsim (Galsim), electrician and driver of Lee, who said that he accompanied Lee and her son Hector, while he (Galsim) stayed at a distance. When asked about the details of the auction sale, Galsim could only testify, however, as follows:

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[29] *Id.* at 74, 96-98, TSN of Ma. Cielo Paz Alba-Celera.

[30] *Id.* at 76, 99-100.

[31] *Id.* at 133.

[32] *Id.* at 134-136.

[33] *Id.* at 137-140.

COURT:

x x x *bakit nyo nalaman na auction sale yung nakita ninyo*?

MR. GALSIM:

Sinabi lang po sa akin.

COURT:

Sino ang nagsabi sayo?

MR. GALSIM:

Si Ma'am Victoria *po.*

COURT:

Ano ho bang nakita ninyo?

MR. GALSIM:

Basta narinig ko...doon ko po nakita si Sheriff po nung pagdating namin tapos nagtatanong x x x.

xxx xxx xxx

COURT:

Nandoon kayo hanggang alas-diyes?

MR. GALSIM:

Opo pero doon sa may harapan ng building.

COURT:

Saan doon sa building *na iyon*?

MR. GALSIM:

Sa harapan po ng building.[34]

xxx xxx xxx

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[34] *Rollo*, pp. 141-143.

COURT:

All these people who testified today, x x x *Pito sila na nagsabi na hindi nakita* si Sheriff Valino. *Ikaw lang ang nagsasabi na nakita mo siya at nandoon ka ng* 9:30 *hanggang alas-diyes, totoo ba yan*?

MR. GALSIM:

Opo, nandoon ho kami.

COURT:

Anong ginawa mo doon?

MR. GALSIM:

Kasama ko lang po si ano dahil nagpa-alalay lang po.

COURT:

Ano nga ang nakita mo? Ang tinatanong ko sa'yo ano ang nakita mo at paano yung ginawang auction sale. Sige nga, sabihin mo nga sa akin.

MR. GALSIM:

Basta narinig ko lang po yung auction sale na salita at saka no bidders.

COURT:

Anong narinig mo?

MR. GALSIM:

Auction sale... auction sale...

COURT:

Anong sinabi? Pano sinabi iyon?

MR. GALSIM:

Isinigaw po ni...sinabi ni...

COURT:

Isinigaw niya?

MR. GALSIM:

Not actually *sigaw*...

xxx xxx xxx

COURT:

Sinu-sino kayo nung mag-auction sale? Paanong ginawa? Saan kayo nandoon? Nakaupo kayo? Nakatayo kayo? Nasa harap kayo ng building o nasaan kayo?

MR. GALSIM:

Nakatayo lang po.

COURT:

Nakatayo lang kayo, tapos? Paanong nangyari? Sige nga.

MR. GALSIM:

Nag-uusap po silang ganon tapos nagsalita po si Sheriff ng auction sale tapos...

COURT:

Yun lang ang sinabi niya, auction sale?

MR. GALSIM:

Yun lang po.

COURT:

Tapos?

MR. GALSIM:

Tapos nag-abot ng papel tapos wala na hindi ko na...

COURT:

Auction sale *lang tapos* no bidder, *tapos tapos na*?

MR. GALSIM:

Opo.

xxx xxx xxx

COURT:

Yung bidder *hindi nagsabi* I'm bidding for so much? *Ano pang nakita mo*?

MR. GALSIM:

Wala na, iyon lang po.

COURT:

Ganun lang? Mukhang hindi ganon ang auction sale *ginawaga* (sic).

MR. GALSIM:

Actually, *hindi ko po talaga... Iyon lang po ang nakita ko, nag*drive *lang po ako, kasama lang,* so *yun lang po ang nalalaman ko kung ano yung* auction *na sinasabi*.[35]

Based on the foregoing, the Investigating Judge correctly concluded that the presumption that respondent regularly performed his official duties was rebutted by complainant's positive and unwavering documentary and testimonial evidence against him.[36]

As a rule, the evaluation by the Investigating Judge of the credibility of witnesses is accorded due respect, even finality, by this Court since the Judge was in a better position to pass judgment on the same, having personally heard them when they testified and observed their deportment and manner of testifying.[37] Considering that the conclusion of the Investigating Judge is supported by the records, the Court finds no reason to depart from said rule.

The OCA also correctly observed that complainant's witnesses are not party to nor do they have an interest in the case, still they pursued the case with tenacity, a fact which bolsters their

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[35] *Rollo*, pp. 144-147.

[36] *Id.* at 178.

[37] *Melecio v. Tan*, A.M. No. MTJ-04-1566, August 22, 2005, 467 SCRA 474; *Meneses v. Zaragoza*, A.M. No. P-04-1768, February 11, 2004, 422 SCRA 434.

credibility. Respondent, meanwhile, is a party to the case; and Galsim is employed by Lee who was supposed to have won in the auction sale.

The Court also notes that respondent admitted not giving complainant a copy of the computation of the amount they were supposed to pay Lee before the auction sale.[38] The Writ of Execution issued by the Branch Clerk of Court on November 27, 2006 also specifically mentions that the decision of the RTC on April 12, 2005, ordering complainant to pay Lee the amount of ₱2,366,829.00 as unpaid balance of her obligation plus ₱50,000.00 as attorney's fees, was appealed to the CA which modified the same and rendered a decision dated October 10, 2005 ordering complainant to pay Lee only the amount of ₱866,829.00 plus legal interest.[39] Still, respondent sold the property for ₱6,680,500.00.[40]

The procedure undertaken by respondent clearly ignored Sec. 9(a), Rule 39 of the Rules of Court on the procedure for execution of judgments for money, which states:

Sec. 9. *Execution of judgments for money, how enforced.* —

(a) Immediate payment on demand. — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court that issued the writ.

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[38] *Rollo*, p. 136, TSN, February 14, 2008.

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

[40] *Id.* at 9.

xxx xxx xxx

For the foregoing acts, respondent is clearly guilty of grave misconduct and dishonesty.

Misconduct, as defined, was an unacceptable behavior that transgresses the established rules of conduct for public officers. To be considered as grave and to warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or to willful, intentional neglect or failure to discharge the duties of the office. There should also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law.[41]

In this case, Judge Pahimna and the staff of Branch 70 exerted efforts to get in touch with respondent before the scheduled auction sale, in order to stop him from conducting the same, in view of issues that had to be threshed out first. Respondent, however, suddenly could not be reached and for several days thereafter was absent, allegedly because he had a flu. The excuse he put forth for his absence and unavailability was truly lame, and no other conclusion could be drawn other than that he had every intent of undertaking a corrupt and illegal scheme of presenting a fictitious auction, when none actually took place.

Respondent's acts also constitute dishonesty, which is defined as the disposition to lie, cheat, deceive, or defraud; unworthiness; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[42] He insists that an auction took place on February 14,

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[41] *Castelo v. Florendo*, A.M. No. P-96-1179, October 10, 2003, 413 SCRA 219.

[42] *Alabastro v. Moncado, Sr.*, A.M. No. P-04-1887, December 16, 2004, 447 SCRA 42; *Re:Administrative Case for Dishonesty Against Elizabeth Ting*, A.M. No. 2001-7-SC & No. 2001-8-SC, July 22, 2005, 464 SCRA 1.

2007 at 10:00 o'clock in the morning at the Pateros Municipal Hall, when many witnesses have claimed that none took place. The testimony of his lone witness as to how the auction transpired was also vague and paled in contrast to the consistent and direct testimony of complainant's witnesses.

Both grave misconduct and dishonesty are grave offenses which are punishable by dismissal even for the first offense.[43] It is also provided in the Uniform Rules on Administrative Cases in the Civil Service that if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.[44] Thus, even though this is respondent's first offense in his 16 years of service in the judiciary, his dismissal from the service is in order.

The Court has always held that court personnel charged with the dispensation of justice, from the presiding judge to the lowliest clerk, bear a heavy responsibility in insuring that their conduct is always beyond reproach. The preservation of the integrity of the judicial process is of utmost importance; thus, all those occupying office in the judiciary should at all times be aware that they are accountable to the people. They must serve with utmost responsibility, integrity, loyalty, and efficiency and must always conduct themselves with the highest degree of propriety and decorum and take utmost care in avoiding incidents that degrade the judiciary and diminish the respect and regard for the courts.[45]

Sheriffs in particular are ranking officers of the court. They play an important part in the administration of justice. In view of their exalted position as keepers of the public faith, it is imperative that their conduct be geared towards maintaining

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[43] Sec. 52 (A) 1 & 3 of the Uniform Rules on Administrative Cases in the Civil Service.

[44] Sec. 55.

[45] *Padua v. Paz*, A.M. No. P-00-1445, April 30, 2003, 402 SCRA 21.

the prestige and integrity of the court.[46] By the very nature of their functions, sheriffs are called upon to discharge their duties with due care and utmost diligence and, above all, to be above suspicion.[47]

As respondent failed in his duty to maintain the good name of the judiciary and as his behavior erodes the faith and confidence of our people in the administration of justice, he does not deserve to stay in the service any longer.

WHEREFORE, Ronberto B. Valino, Deputy Sheriff, Regional Trial Court, Branch 70, Pasig City is found *GUILTY* of grave misconduct and dishonesty, for which he is *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago and *Tinga, JJ.,* on official leave.

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[46] *Hofer v. Tan,* A.M. No. P-05-1990, July 26, 2007, 528 SCRA 184.

[47] *Geolingo v. Albayda,* A.M. No. P-02-1660, January 31, 2006, 481 SCRA 324.

SECOND DIVISION

[G.R. No. 173480. February 25, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUIZ GARCIA *y* RUIZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; TRIAL OF CRIMINAL CASES; PROCEDURE. — Every criminal case starts with the constitutionally-protected presumption of innocence in favor of the accused that can only be defeated by proof beyond reasonable doubt. The prosecution starts the trial process by presenting evidence showing the presence of all the elements of the offense charged. If the prosecution proves all the required elements, the burden of evidence shifts to the accused to disprove the prosecution's case. Based on these presentations, the court must then determine if the guilt of the accused has been proven beyond reasonable doubt. It may happen though that the prosecution, even before the presentation by the defense, already has failed to prove all the elements of the crime charged, in which case, the presumption of innocence prevails; the burden of evidence does not shift to the accused, who no longer needs to present evidence in his defense.

2. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED DRUG; ELEMENTS. — In a prosecution for the illegal sale of a prohibited drug, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.

3. ID.; BUY-BUST OPERATION; NATURE. — A buy-bust operation gave rise to the present case. While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in

secrecy, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. In *People v. Tan*, this Court itself recognized that *"by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses."* Accordingly, specific procedures relating to the seizure and custody of drugs have been laid down in the law (R.A. No. 9165) for the police to strictly follow. The prosecution must adduce evidence that these procedures have been followed in proving the elements of the defined offense.

4. ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIREMENTS UNDER PARAGRAPH 1, SECTION 21, ARTICLE II; EFFECT OF NON-COMPLIANCE THEREWITH. — The first procedural safeguard x x x is that provided under paragraph 1, Section 21, Article II of R.A. No. 9165. This provision states: 1. The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated** and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The Implementing Rules and Regulations of R.A. No. 9165 further elaborate on the legal requirement by providing, under its Section 21(a), that: (a) The apprehending office/team having initial custody and control of the drugs shall, **immediately** after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official

who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. x x x In *People v. Orteza*, the Court, in discussing the implications of the failure to comply with Paragraph 1, Section 21, Article II of R.A. No. 9165, declared: In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*. The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and **to observe the procedure and take custody of the drug.** More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and **the lack of inventory on the seized drugs** created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*. We reached the same conclusion in *People v. Nazareno* and *People v. Santos, Jr.*, and recently, in the cases of *People v. Dela Cruz* and *People v. De la Cruz* where we again stressed the importance of complying with the prescribed procedure. We also held that strict compliance is justified under the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused.

5. ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPH OF ITEMS SEIZED, WHERE CONDUCTED. — In *People v. Sanchez*, we held that in case of warrantless seizure (such as a buy-bust operation) under R.A. No. 9165, the physical inventory and photograph of the items shall be made by the buy-bust team, if practicable, **at the place** they were seized, considering that such interpretation is more in keeping with the law's intent of preserving the integrity and evidentiary value of the seized drugs.

6. ID.; ID.; REQUIREMENTS UNDER PARAGRAPH 1, SECTION 21, ARTICLE II; NON-COMPLIANCE THEREWITH SHALL NOT RENDER VOID AND INVALID THE SEIZURE OF AND CUSTODY OVER THE SEIZED ITEMS; CONDITIONS. — Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, *i.e.,"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."* In *Sanchez*, we clarified that this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds. We also stressed in *Sanchez*, that in such case, the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved. These conditions were not met in the present case, as the prosecution, in the first place, did not even recognize the procedural lapses the police committed in handling the seized items.

7. REMEDIAL LAW; EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY REQUIREMENT OF CONFISCATED DRUGS; SIGNIFICANCE. — In *Lopez v. People*, we explained the importance of establishing the chain of custody of the confiscated drugs, as follows: As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witnesses' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same**. While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, **an unbroken chain of**

custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule.

8. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); DANGEROUS DRUGS BOARD REGULATION NO. 1, SERIES OF 2002; CHAIN OF CUSTODY; DEFINED. — The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. It is important enough as a concern that Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 (which implements R.A. No. 9165) specifically defines chain of custody. b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition; x x x.

9. ID.; ID.; DANGEROUS DRUGS BOARD REGULATION NO. 2, SERIES OF 2003; DOCUMENTATION OF THE CHAIN OF CUSTODY BY LABORATORY PERSONNEL, REQUIRED. — Sections 3 and 6 (paragraph 8) of Dangerous Drugs Board Regulation No. 2, Series of 2003 require laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed. The board

regulation also requires the identification of the individuals participating in the chain.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We review in this Decision the conviction of accused-appellant Ruiz Garcia *y* Ruiz (*Ruiz*) by the Court of Appeals (*CA*) in its Decision of May 10, 2006[1] for violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The assailed CA decision fully affirmed the decision of the Regional Trial Court (*RTC*),[2] Branch 72, Malabon City.

Ruiz was formally charged and pleaded "not guilty" under an Information that reads:

That on or about the 27th day of February 2003, in the Municipality of Navotas, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person, and without authority of law, did then and there, willfully, unlawfully, and feloniously sell and deliver for consideration in the amount of ₱200.00 to poseur-buyer one (1) piece of printed paper with markings 'RGR-1' containing the following: one (1) small brick of dried suspected Marijuana fruiting tops with a net weight 11.02 gram[s] and Thirteen (13) small white paper[s] with markings 'RGR-RPI' through 'RGR-RP13,' respectively, which substance, when subjected to chemistry examination gave positive result for Marijuana, a dangerous drug.[3]

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[1] *Rollo*, pp. 2-13; docketed as CA-GR CR-H.C. No. 00954; penned by Associate Justice Martin S. Villarama, Jr. with Associate Justice Edgardo F. Sundiam (deceased) and Associate Justice Japar B. Dimaampao, concurring.

[2] Penned by Hon. Benjamin M. Aquino, Jr. on July 27, 2004 in Criminal Case No. 2844-MM; CA *rollo*, pp. 47-51.

[3] Records, p. 1.

In the pre-trial conference that followed, his counsel admitted the following: (1) the identity of Ruiz as the accused in the case; (2) the jurisdiction of the RTC; and (3) Ruiz' lack of authority to possess or sell shabu. [4] The defense counsel also manifested that admissions could be made in the course of the trial concerning the manner and nature of the testimony of the forensic chemist.[5]

The prosecution presented a single witness, PO1 Samuel Garcia (*PO1 Garcia*), who, as poseur-buyer, testified that Ruiz' arrest was made pursuant to a legitimate buy-bust operation where Ruiz sold him marijuana. The parties dispensed with the testimony of the forensic chemist, Jesse Abadilla Dela Rosa, after they entered into stipulations concerning the manner and nature of his testimony.[6]

The prosecution also submitted the following evidence:

Exhibit "A"	- INFOREP dated February 7, 2003 written by Police Senior Superintendent Oscar F. Valenzuela;
Exhibit "B"	- the Dispatch Order dated February 27, 2003;
Exhibit "C-1" and "C-2"	- the photocopy of the recovered marked money;
Exhibit "D"	- the Pre-Operation Report dated February 27, 2003 prepared by PO2 Geoffrey Huertas;
Exhibit "E"	- the *Sinumpaang Salaysay* of PO1Samuel Sonny Garcia;
Exhibit "F"	- the *corpus delicti*;
Exhibit "H"	- the Request for Laboratory Examination dated February 28, 2003 submitted by Ferdinand Lavadia Balgoa, Police Inspector Chief SDEU and;

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

[5] *Id*.

[6] Records, p. 64; Order dated June 17, 2004.

Exhibit "G"	- the Physical Sciences Report No. D-250-03 prepared by forensic chemist Jesse Abadilla Dela Rosa.

The defense relied solely on the testimony of Ruiz who claimed he was the victim of a police frame-up and extortion.

The RTC summarized the prosecution's version of events as follows:

> On February 27, 2003, at around 2:45 p.m., PO1 Samuel Garcia was with a confidential informer and two other policemen at the back of San Roque Church, Navotas, Metro Manila, waiting for the accused with whom the confidential informer arranged for him (Garcia) to buy marijuana. There were prior Informations [sic] from Camp Crame and the NPDO about the selling of marijuana xxx For this reason, Garcia got in touch with the confidential informer whom [sic] he learned could buy marijuana from the accused.
>
> It did not take long after the arrival of Garcia and the others at the area of operation for the accused to arrive on board a red scooter. Garcia told the accused that he will buy ₱200.00 worth of marijuana, as agreed upon between the confidential informer and the accused. The accused in turn gave Garcia the marijuana wrapped in a yellow page of the PLDT directory. Garcia verified the contents thereof and thereafter gave the ₱200.00, consisting of two ₱100.00 bills earlier given for him to use as buy-bust money xxx whose serial numbers were listed in the dispatch order xxx Garcia then gave the signal to his companions for them to approach. He also arrested the accused whom he told of his rights and brought him to a lying-in clinic and then to the police headquarters.

According to PO1 Garcia, after the arrest, they brought Ruiz to the DEU[7] office for investigation. He (PO1 Garcia) turned over the seized items to the investigator, who then placed markings on the wrapper.[8] The seized items were thereafter sent to the PNP Crime Laboratory for examination; they tested positive for marijuana.[9]

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[7] Drug Enforcement Unit.

[8] TSN, May 24, 2004, p. 10.

[9] *Id.*, p. 19.

The version of the defense, as summarized by the RTC, is as follows:

> Accused Ruiz Garcia *y* Ruiz, on the other hand, maintained that he was riding on a hopper on his way [home] to his wife at Daang Hari, Navotas, Metro Manila, when he saw a jeep with policemen on board. A policeman named Balais stopped the accused and asked for the papers of the hopper which he, at the same time, searched with nothing illegal found inside its compartment [sic].
>
> The accused then heard someone remarked *"ito pala si Ruiz,"* and he was told to go along with the policemen, who initially brought him to the lying-in clinic, and then to the police headquarters where he was asked to make *"tubos"* or to "ransom" the hopper; Garcia [Ruiz] was not able to do so because he cannot afford what the policemen were demanding. As a consequence, he was detained and charged in this case which he protested, as nothing was confiscated from him.

Ruiz claimed that the case was a trumped-up charge made by the police to extort money from him.[10] In making this claim, he admitted that he did not know PO1 Garcia and that he saw him for the first time when he was arrested.[11] He insisted that he knew a certain Balais who arrested suspected pushers/users in their place.[12]

The prosecution and the defense thereafter entered into stipulations on the substance of the rebuttal and sur-rebuttal testimonies of PO1 Garcia and Ruiz, which were mainly reiterations of their earlier testimonies.[13] In its Decision of July 27, 2004, the RTC found Ruiz guilty beyond reasonable doubt of the crime charged, and sentenced him to **life imprisonment** and to pay a fine of ₱500,000.00 and costs.[14] The CA, on appeal, fully affirmed the RTC's decision.[15]

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[10] TSN, July 2, 2004, p. 4.

[11] TSN, July 9, 2004, p. 2.

[12] TSN, July 2, 2004, p. 3.

[13] *Records*, p. 81; Order dated July 12, 2004.

[14] CA *Rollo*, p. 51.

[15] *Id.*, p. 134.

In the present appeal before us, Ruiz faults the CA for believing the testimony of the lone prosecution witness, and for convicting him despite the insufficiency of supporting evidence. He observes that: (a) PO1 Garcia's motive was to impress his superiors who had issued a special order against him; (b) the police officers arrested him to extort money by asking him to ransom his scooter which the police had confiscated; (c) no prior surveillance was conducted before he was arrested; (d) the informant was not presented in court; (e) his arrest was illegal because it was made without a warrant; and (f) there was no compliance with Section 21, R.A. No. 9165 or the chain of custody rule on seized drugs.[16]

The People, through the Office of the Solicitor General, maintains that the lower courts correctly found Ruiz guilty of the crime charged.[17] As established through the testimony of PO1 Garcia, his arrest was effected through a legitimate buy-bust operation that was regularly conducted, properly documented, and coordinated with the PDEA.[18] The Office of the Solicitor General also argued that Ruiz failed to present sufficient evidence to substantiate his claim of frame-up; his (Ruiz') evidence also failed to overcome the presumption of regularity in the performance of official duties by the public officers in the case.[19]

THE COURT'S RULING

After due consideration, we resolve to **ACQUIT** Ruiz, as the prosecution's evidence failed to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to show that the police complied with paragraph 1, Section 21, Article II of R.A. No. 9165, and with the chain of evidence requirement of this Act.

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[16] As stated in the Brief for the Accused-Appellant, Reply, and Supplemental Brief, CA *rollo*, pp. 62-72, 107-113; *rollo*, pp. 22-28.

[17] Brief for Appellee; CA *rollo,* pp. 82-101.

[18] The Philippine Drug Enforcement Agency.

[19] *Supra* note 17, p. 99.

Every criminal case starts with the constitutionally-protected presumption of innocence in favor of the accused that can only be defeated by proof beyond reasonable doubt. The prosecution starts the trial process by presenting evidence showing the presence of all the elements of the offense charged. If the prosecution proves all the required elements, the burden of evidence shifts to the accused to disprove the prosecution's case. Based on these presentations, the court must then determine if the guilt of the accused has been proven beyond reasonable doubt. It may happen though that the prosecution, even before the presentation by the defense, already has failed to prove all the elements of the crime charged, in which case, the presumption of innocence prevails; the burden of evidence does not shift to the accused, who no longer needs to present evidence in his defense.

In a prosecution for the illegal sale of a prohibited drug, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed,[20] as shown by presenting the object of the illegal transaction. *In the present case, the object is marijuana which the prosecution must present and prove in court to be the same item seized from the accused. It is in this respect that the prosecution failed.*

The requirements of paragraph 1, Section 21 of Article II of R.A. No. 9165.

A buy-bust operation gave rise to the present case. While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted

[20] *People v. Domangay*, G.R. No. 173483, September 23, 2008, citing *People v. Del Mundo*, 510 SCRA 554, 562 (2006), citing *People v. Isnani*, 431 SCRA 439, 449 (2004), and *People v. Monte*, 408 SCRA 305, 309-310 (2003).

covertly and in secrecy,[21] a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. In *People v. Tan*,[22] this Court itself recognized that *"by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses."* Accordingly, specific procedures relating to the seizure and custody of drugs have been laid down in the law (R.A. No. 9165) for the police to strictly follow. The prosecution must adduce evidence that these procedures have been followed in proving the elements of the defined offense.

The first procedural safeguard that the police failed to observe (and which both the RTC and the CA failed to take into account) is that provided under paragraph 1, Section 21, Article II of R.A. No. 9165. This provision states:

> 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

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[21] *People v. Jocson*, G.R. No. 169875, December 18, 2007, 540 SCRA 585, 592; International Narcotics Control Strategy Report 2008 (The Philippines) released by the Bureau for International Narcotics and Law Enforcement Affairs <http://www.shap.hawai.edu/drugs/incsr2008/incsr_2008_The Philippines. html> (visited November 21, 2008).

[22] G.R. No. 133001, December 14, 2000, 348 SCRA 116, 126-127, citing *People v. Gireng*, 241 SCRA 11 (1995) and *People v. Pagaura*, 267 SCRA 17 (1997).

> official who shall be required to sign the copies of the inventory and be given a copy thereof. [Emphasis supplied.]

The Implementing Rules and Regulations of R.A. No. 9165 further elaborate on the legal requirement by providing, under its Section 21(a), that:

> (a) The apprehending office/team having initial custody and control of the drugs shall, **immediately** after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[Emphasis supplied.]

The records utterly fail to show that the buy-bust team complied with these procedures despite their mandatory nature as indicated by the use of "shall" in the directives of the law and its implementing rules. The procedural lapse is plainly evident from the testimony of PO1 Garcia. Testifying on the handling of the seized marijuana, he stated that:

> Q: After he handed to you the one pack and then you handed to him the ₱200.00, what happened next?
> A: After verifying the contents and after convincing myself that the same is marijuana, I handed to him the money and raised my hand as a pre-arrange[d] signal.
>
> xxx xxx xxx
>
> Q: After you had arrested the person of the accused, what happened next?
> A: We brought him for medical examination and [thereafter] brought him to our office.

xxx xxx xxx

Q: So what happened to the pack of marijuana that you were able to buy from the accused?
A: I turned it over to our investigator and then he placed markings on the wrapper.

xxx xxx xxx

Q: I am handing to you now the improvise [sic] wrapper. Is this the marking that you placed?
A: Yes, sir, RP-1.

xxx xxx xxx

Q: What happened after you have seized the item from the accused or after you have recovered this and placing [sic] markings?
A: It was sent to the PNP Crime Laboratory for laboratory examination.[23]

Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items *at the police station*, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives.[24] There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.[25]

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[23] TSN, May 24, 2004, pp. 7-9.

[24] *People v. De la Cruz*, G.R. No. 177222, October 29, 2008.

[25] *Id*.

In *People v. Orteza*,[26] the Court, in discussing the implications of the failure to comply with Paragraph 1, Section 21, Article II of R.A. No. 9165, declared:

> In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.
>
> The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and **to observe the procedure and take custody of the drug**.
>
> More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and **the lack of inventory on the seized drugs** created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*. [Emphasis supplied.]

We reached the same conclusion in *People v. Nazareno*[27] and *People v. Santos, Jr.*,[28] and recently, in the cases of *People v. Dela Cruz*[29] and *People v. De la Cruz*[30] where we again stressed the importance of complying with the prescribed procedure. We also held that strict compliance is justified under the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused.[31]

In addition, we also note that PO1 Garcia testified that he marked the confiscated items when he returned to the police station after the buy-bust operation. This admission additionally

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[26] G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758-759.

[27] G.R. No. 174771, September 11, 2007, 532 SCRA 630, 637.

[28] G.R. No. 175593, October 17, 2007, 536 SCRA 489, 504.

[29] G.R. No. 181545, October 8, 2008.

[30] *Supra* note 24.

[31] *Id*.

shows that the marking was not done immediately after seizure of the items, but only after a significant intervening time had lapsed, *i.e.*, after the buy-bust team had taken Ruiz to a lying-in clinic for a medical examination,[32] and from there, to the police headquarters. Significantly, Ruiz confirmed in his testimony that the buy-bust team first took him to the San Jose Lying-in Center, before proceeding to the police headquarters.[33]

In *People v. Sanchez*,[34] we held that in case of warrantless seizure (such as a buy-bust operation) under R.A. No. 9165, the physical inventory and photograph of the items shall be made by the buy-bust team, if practicable, **at the place** they were seized, considering that such interpretation is more in keeping with the law's intent of preserving the integrity and evidentiary value of the seized drugs.[35] The prosecution, in the present case, failed to explain why the required inventory and photographing of the seized items were not practicable and could not have been done at the place of seizure.

We further note, on the matter of identifying the seized items, that the lower courts overlooked the glaring inconsistency between PO1 Garcia's testimony *vis-à-vis* the entries in the Memorandum dated February 28, 2003 (the request for laboratory examination of the seized items)[36] and the Physical Science Report No. D-250-03 dated February 28, 2003 issued by the PNP Crime Laboratory with respect to the marking on the seized items.[37]

PO1 Garcia testified that he had marked the seized item (on the wrapper) with the initial "**RP-1.**"[38] However, an examination of the two documents showed a different marking: on one hand,

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[32] TSN, May 24, 2004, p. 8.

[33] TSN, July 2, 2004, pp. 2-4.

[34] G.R. No. 175832, October 15, 2008.

[35] *Id.*

[36] Records, p. 47.

[37] *Id.*, p. 5.

[38] TSN, May 24, 2004, p. 9.

what was submitted to the PNP Crime Laboratory consisted of a single piece telephone directory paper containing suspected dried marijuana leaves fruiting tops with the marking "**RGR-1**" and thirteen pieces of rolling paper with the markings "**RGR-RP1**" to "**RGR-RP13**"; on the other hand, the PNP Crime Laboratory examined the following items with the corresponding markings: a printed paper with the marking "**RGR-1**" together with one small brick of dried suspected marijuana fruiting tops and thirteen pieces of small white paper with the markings "**RGP-RP1**" to **"RGP-RP13.**"

PO1 Garcia's testimony is the only testimonial evidence on record relating to the handling and marking of the seized items since the testimony of the forensic chemist in the case had been dispensed with by agreement between the prosecution and the defense. Unfortunately, PO1 Garcia was not asked to explain the discrepancy in the markings. Neither can the stipulated testimony of the forensic chemist now shed light on this point, as the records available to us do not disclose the exact details of the parties' stipulations.

To our mind, the procedural lapses in the handling and identification of the seized items, as well as the unexplained discrepancy in their markings, collectively raise doubts on whether the items presented in court were the exact same items that were taken from Ruiz when he was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case.[39]

To be sure, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, *i.e.*, "*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.*" In *Sanchez*, we clarified that this saving clause applies only where the prosecution

[39] *Supra* note 25.

recognized the procedural lapses, and thereafter explained the cited justifiable grounds.[40] We also stressed in *Sanchez,* that in such case, the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved.[41]

These conditions were not met in the present case, as the prosecution, in the first place, did not even recognize the procedural lapses the police committed in handling the seized items. Had the prosecution done so, it would not have glossed over the deficiencies and would have, at the very least, submitted an explanation and proof showing that the integrity and evidentiary value of the seized items have been preserved.

The chain of custody requirement

In *Lopez v. People,*[42] we explained the importance of establishing the chain of custody of the confiscated drugs, as follows:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witnesses' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.**
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, **an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable**, or when its condition at the time of testing or trial is critical, or when a witness

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[40] *Supra* note 35.

[41] *Id.*

[42] G.R. No. 172953, April 30, 2008.

has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule. [Emphasis supplied.]

The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[43] It is important enough as a concern that Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002[44] (which implements R.A. No. 9165) specifically defines chain of custody.

b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage**, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition;

In the present case, while PO1 Garcia duly testified on the identity of the buyer and seller, on the consideration that supported the transaction, and on the manner the sale took place,[45] the prosecution's evidence failed to establish the chain that would

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[43] *People v. Sanchez, supra* note 35, citing *Lopez v. People*, *supra* note 42.

[44] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of R.A. No. 9165 in relation to Section 81(b), Article IX of R.A. No. 9165.

[45] TSN, May 24, 2004, pp. 6-7.

have shown that the marijuana presented in court was the very item seized from Ruiz at the time of his arrest.

(a) The first crucial link in the chain of custody

The first crucial link was from the time the marijuana was seized by PO1 Garcia to its delivery to the police investigator at the police headquarters. Only PO1 Garcia testified to this link. From his own testimony, he did not mark the seized marijuana after it was handed to him by Ruiz; he only marked it at the police station when he turned it over to the investigator. In the interim, **he and the rest of the buy-bust team had taken Ruiz to a lying-in clinic for medical examination**. The evidence does not show who was in possession of the marijuana during the ride from the crime scene to the lying-in center, and from the lying-in center to the police station.

(b) The second link in the chain of custody

The second link in the chain of custody of the seized marijuana is from PO1 Garcia to the police investigator. The identity of this police investigator to whom the custody of the seized marijuana was turned over was not disclosed. Although a reading of the Memorandum dated February 28, 2003 shows that a certain Ferdinand Lavadia Balgoa, as Police Inspector Chief SDEU, prepared the request for the laboratory examination of the seized marijuana to the PNP Crime Laboratory, this piece of evidence does not establish the latter's identity as the police inspector to whom PO1 Garcia turned over the marijuana, and who subsequently made the corresponding markings on the seized items.

(c) The subsequent links in the chain of custody

The evidence on record relating to the subsequent links in the chain of custody – from the police inspector to the PNP Crime Laboratory –did not identify the person who submitted the seized marijuana to the PNP Crime Laboratory for examination. Whether it was the Police Inspector Chief SDEU is not clear from the evidence that only shows that he signed the request for the laboratory examination of the seized marijuana

to the PNP Crime Laboratory. At the same time, the identity of the person who had the custody and safekeeping of the seized marijuana, after it was chemically analyzed pending its presentation in court, was also not disclosed.

In this regard, Sections 3[46] and 6[47] (paragraph 8) of Dangerous Drugs Board Regulation No. 2, Series of 2003[48] require laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed. The board regulation also requires the identification of the individuals participating in the chain. The available records in the case fail to show compliance with this regulation.

Given the procedural lapses pointed out above, serious uncertainty hangs over the identification of the seized marijuana that the prosecution introduced into evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused. As we pointed out in the opening statement of our Ruling, this brings the case to a situation where the defense does not even need to present evidence as it has no viable case to meet. We need not therefore discuss the specific defenses raised. Nor do we need to discuss the lower courts' misplaced reliance on the presumption of regularity in the performance of official duties, except to state that the presumption only arises

[46] Chain of Custody refers to procedures to account for each specimen by tracking its handling and storage from point of collection to final disposal. These procedures require that the applicant's identity is confirmed and that a Custody and Control Form is used from time of collection to receipt by the laboratory. Within the laboratory, appropriate chain of custody records must account for the samples until disposal.

[47] 8. Chain of Custody — A laboratory shall use documented chain of custody procedures to maintain control and accountability of specimens. The date and purpose shall be recorded on an appropriate Custody and Control Form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized collection staff shall be responsible for each specimen in their possession and shall sign and complete the Custody and Control Forms. xxx.

[48] Implementing Rules and Regulations Governing Accreditation Of Drug Testing Laboratories in the Philippines.

in the absence of contrary details in the case that raise doubt on the regularity in the performance of official duties. Where, as in the present case, the police officers failed to comply with the standard procedures prescribed by law, there is no occasion to apply the presumption.[49]

We close with the thought that this Court is not unaware that in the five years that R.A. No. 9165 has been in place, the rate of cases that resulted in acquittals and dismissals was higher than the rate of conviction.[50] Under PDEA records, the dismissals and acquittals accounted for 56% because of the failure of the police authorities to observe proper procedure under the law, among others.[51] A recent international study conducted in 2008 showed that out of 13,667 drug cases filed from 2003 to 2007, only 4,790 led to convictions (most of which were cases of simple possession); the charges against the rest were dismissed or the accused were acquitted.[52]

The present case is now an added statistic reflecting our dismal police and prosecution records. Without casting blame, we call the attention of the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. We cannot afford to fail either in combating the drug menace or in protecting the individual rights and liberties we have enshrined in our Constitution. Either way, the consequences of continued failure are hard to imagine.

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[49] *People v. Santos, Jr., supra* note 28, p. 503.

[50] Taken from the news article entitled "Anti-Drug Law in Cordillera High Dismissal Rate of Cases Traced to Law Weakness" by Donna Demetillo and Elmer Kristian Duigoy http://newsinfo.inquirer.net (visited November 19, 2008).

[51] *Id.*

[52] International Narcotics Control Strategy Report 2008 (The Philippines) released by the Bureau for International Narcotics and Law Enforcement Affairs <http://www.shap.hawai.edu/drugs/incsr2008/incsr_2008_The Philippines. html> (visited November 21, 2008).

WHEREFORE, premises considered, the Decision dated May 10, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00954 is *REVERSED* and *SET ASIDE*. Accused-appellant Ruiz Garcia *y* Ruiz is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken. Copies shall also be furnished the Director General, Philippine National Police, and the Director General, Philippine Drugs Enforcement Agency, for their information.

The Regional Trial Court is directed to turn over the seized marijuana to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Peralta,*[**] *JJ.,* concur.

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[*] Per Division Raffle dated February 18, 2009. Associate Justice Minita Chico-Nazario was designated as Additional Member of the Second Division relative to the subject case, to replace Justice Antonio Eduardo B. Nachura, who was previously designated as Additional Member of the Second Division per Special Order No. 571 dated February 12, 2009, but inhibited therefrom.

[**] Designated additional member vice Justice Presbitero J. Velasco, Jr., per Special Order No. 572 dated February 12, 2009.

FIRST DIVISION

[G.R. No. 164015. February 26, 2009]

RAMON A. ALBERT, *petitioner, vs.* **THE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; ARRAIGNMENT; DEFINED. — An arraignment is that stage where in the mode and manner required by the rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily.

2. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS. — Petitioner is charged with violation of Section 3(e) of RA 3019 which provides as follows: "SEC. 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions." This crime has the following essential elements: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3. His action caused any undue injury to any party, including the government, or gave any

private party unwarranted benefits, advantage or preference in the discharge of his functions.

3. ID.; ID.; HOW COMMITTED. —The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In *Uriarte v. People*, this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

4. REMEDIAL LAW; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; AMENDMENT; TEST AS TO WHEN THE RIGHTS OF THE ACCUSED ARE PREJUDICED BY THE AMENDMENT OF A COMPLAINT OR INFORMATION. — The test as to when the rights of an accused are prejudiced by the amendment of a complaint or information is when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the complaint or information as amended. On the other hand, an amendment which merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at anytime.

5. ID.; ID.; ID.; ID.; AMENDMENT IN FORM; ALLOWED EVEN AFTER ARRAIGNMENT AND PLEA; CASE AT BAR. — In

this case, the amendment entails the deletion of the phrase "gross neglect of duty" from the Information. Although this may be considered a substantial amendment, the same is allowable even after arraignment and plea being beneficial to the accused. As a replacement, "gross inexcusable negligence" would be included in the Information as a modality in the commission of the offense. This Court believes that the same constitutes an amendment only in form. In *Sistoza v. Desierto*, the Information charged the accused with violation of Section 3(e) of RA 3019, but specified only "manifest partiality" and "evident bad faith" as the modalities in the commission of the offense charged. "Gross inexcusable negligence" was not mentioned in the Information. Nonetheless, this Court held that the said section is committed by *dolo* or *culpa*, and although the Information may have alleged only one of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof. In so ruling, this Court applied by analogy the pronouncement in *Cabello v. Sandiganbayan* where an accused charged with willful malversation was validly convicted of the same felony of malversation through negligence when the evidence merely sustained the latter mode of perpetrating the offense. The Court held that a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense. Thus, we hold that the inclusion of "gross inexcusable negligence" in the Information, which merely alleges "manifest partiality" and "evident bad faith" as modalities in the commission of the crime under Section 3(e) of RA 3019, is an amendment in form.

6. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; RIGHT OF THE ACCUSED TO A SPEEDY TRIAL; WHEN VIOLATED. — The right of an accused to a speedy trial is guaranteed under Section 16, Article III of the Philippine Constitution which provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right, however, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed

to elapse without the party having his case tried. A simple mathematical computation of the period involved is not sufficient. We concede that judicial proceedings do not exist in a vacuum and must contend with the realities of everyday life.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for *certiorari*[1] of the Resolutions dated 10 February 2004[2] and 3 May 2004[3] of the Sandiganbayan. The 10 February 2004 Resolution granted the prosecution's Motion to Admit the Amended Information. The 3 May 2004 Resolution denied the Motion For Reconsideration of petitioner Ramon A. Albert (petitioner).

The Facts

On 24 March 1999, the Special Prosecution Officer (SPO) II of the Office of the Ombudsman for Mindanao charged petitioner and his co-accused, Favio D. Sayson and Arturo S. Asumbrado, before the Sandiganbayan with violation of Section 3(e) of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act in Criminal Case No. 25231. The Information alleged:

The undersigned Special Prosecution Officer II of the Office of the Ombudsman for Mindanao hereby accuses RAMON A. ALBERT,

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Godofredo L. Legaspi with Associate Justices Raoul V. Victorino, and Roland B. Jurado, concurring.

[3] Approved by Associate Justices Godofredo L. Legaspi, Raoul V. Victorino, and Diosdado M. Peralta (now a member of this Court).

FAVIO D. SAYSON, and ARTURO S. ASUMBRADO for (sic) violation of Section 3(e) R.A. 3019, as amended, committed as follows:

> That in (sic) or about May 1990 and sometime prior or subsequent thereto, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, accused RAMON A. ALBERT, a public officer, being then the President of the National Home Mortgage and Finance Corporation, occupying the said position with a salary grade above 27, while in the performance of his official function, committing the offense in relation to his office, taking advantage of his official position, conspiring and confederating with accused FAVIO D. SAYSON, then the Project Director of CODE Foundation Inc. and accused ARTURO S. ASUMBRADO, then the President of the Buhangin Residents and Employees Association for Development, Inc., acting with evident bad faith and manifest partiality and or gross neglect of duty, did then and there willfully, unlawfully and criminally cause undue injury to the government and public interest, enter and make it appear in Tax Declaration Nos. D-3-1-7691 and D-3-1-7692 that two parcels of real property particularly described in the Certificate of Titles Nos. T-151920 and T-151921 are residential lands which Tax Declarations accused submitted to the NHMFC when in truth and in fact, as accused well knew, the two pieces of real property covered by Certificate of Titles Nos. T-151920 and T-151921 are agricultural land, and by reason of accused's misrepresentation, the NHMFC released the amount of ₱4,535,400.00 which is higher than the loanable amount the land could command being agricultural, thus causing undue injury to the government.
>
> CONTRARY TO LAW.[4]

On 26 March 1999, a Hold Departure Order was issued by the Sandiganbayan against petitioner and his co-accused.

On 25 May 1999, petitioner filed a Motion to Dismiss Criminal Case No. 25231 on the following grounds: (1) the accused (petitioner) was denied due process of law; (2) the Office of the Ombudsman did not acquire jurisdiction over the person of the accused; (3) the constitutional rights of the accused to a speedy disposition of cases and to a speedy trial were violated;

[4] *Rollo*, pp. 34-35.

and (4) the resolution dated 26 February 1999 finding the accused guilty of violation of Section 3(e) of RA 3019 is not supported by evidence.[5]

On 18 December 2000, pending the resolution of the Motion to Dismiss, petitioner filed a Motion to Lift Hold Departure Order and to be Allowed to Travel. The prosecution did not object to the latter motion on the condition that petitioner would be "provisionally" arraigned.[6] On 12 March 2001, petitioner filed an Urgent Motion to Amend Motion to Lift Hold Departure Order and to be Allowed to Travel. The following day, or on 13 March 2001, the Sandiganbayan arraigned petitioner who entered a plea of "not guilty." In the Resolution dated 16 April 2001, the Sandiganbayan granted petitioner's Urgent Motion to Amend Motion to Lift Hold Departure Order and to be Allowed to Travel.

On 26 November 2001, the Sandiganbayan denied petitioner's Motion to Dismiss and ordered the prosecution to conduct a reinvestigation of the case with respect to petitioner. In a Memorandum dated 6 January 2003, the SPO who conducted the reinvestigation recommended to the Ombudsman that the indictment against petitioner be reversed for lack of probable cause. However, the Ombudsman, in an Order dated 10 March 2003, disapproved the Memorandum and directed the Office of the Special Prosecutor to proceed with the prosecution of the criminal case. Petitioner filed a Motion for Reconsideration of the Order of the Ombudsman.

In a Resolution promulgated on 16 May 2003, the Sandiganbayan scheduled the arraignment of petitioner on 24 July 2003. However, in view of the pending motion for reconsideration of the order of the Ombudsman, the arraignment was reset to 2 October 2003.

In a Manifestation dated 24 September 2003, the SPO informed the Sandiganbayan of the Ombudsman's denial of petitioner's motion for reconsideration. On even date, the prosecution filed an *Ex-Parte* Motion to Admit Amended Information. During

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[5] *Id.* at 36.

[6] Records, Vol. I, p. 173.

the 2 October 2003 hearing, this *ex-parte* motion was withdrawn by the prosecution with the intention of filing a Motion for Leave to Admit Amended Information. The scheduled arraignment of petitioner was reset to 1 December 2003.[7]

On 7 October 2003, the prosecution filed a Motion for Leave to Admit Amended Information. The Amended Information reads:

The undersigned Special Prosecution Officer I of the Office of Special Prosecutor, hereby accuses RAMON A. ALBERT, FAVIO D. SAYSON, and ARTURO S. ASUMBRADO for (sic) violation of Section 3(e) R.A. 3019, as amended, committed as follows:

> That in (sic) or about May 1990 and sometime prior or subsequent thereto, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, accused RAMON A. ALBERT, a public officer, being then the President of the National Home Mortgage and Finance Corporation, occupying the said position with a salary grade above 27, while in the performance of his official function, committing the offense in relation to his office, taking advantage of his official position, conspiring and confederating with accused FAVIO D. SAYSON, then the Project Director of CODE Foundation Inc. and accused ARTURO S. ASUMBRADO, then the President of the Buhangin Residents and Employees Association for Development, Inc., acting with evident bad faith and manifest partiality **and/or** gross **inexcusable negligence**, did then and there willfully, unlawfully and criminally cause undue injury to the government and public interest, enter and make it appear in Tax Declaration Nos. D-3-1-7691 and D-3-1-7692 that two parcels of real property particularly described in the Certificate of Titles Nos. T-151920 and T-151921 are residential lands which Tax Declarations accused submitted to the NHMFC when in truth and in fact, as accused well knew, the two pieces of real property covered by Certificate of Titles Nos. T-151920 and T-151921 are agricultural land, and by reason of accused's misrepresentation, the NHMFC released the amount of ₱4,535,400.00 which is higher

[7] Due to various pending matters, the arraignment of petitioner was postponed several times and was finally conducted on 10 March 2005. (Records, Vol. II, p. 221)

than the loanable amount the land could command being agricultural, thus causing undue injury to the government.

CONTRARY TO LAW.[8]

Petitioner opposed the motion, alleging that the amendment made on the information is substantial and, therefore, not allowed after arraignment.

The Ruling of the Sandiganbayan

In its Resolution of 10 February 2004,[9] the Sandiganbayan granted the prosecution's Motion to Admit Amended Information. At the outset, the Sandiganbayan explained that "gross neglect of duty" which falls under Section 3(f) of RA 3019 is different from "gross inexcusable negligence" under Section 3(e), and held thus:

In an information alleging gross neglect of duty, it is not a requirement that such neglect or refusal causes undue injury compared to an information alleging gross inexcusable negligence where undue injury is a constitutive element. A change to this effect constitutes substantial amendment considering that the possible defense of the accused may divert from the one originally intended.

It may be considered however, that there are three modes by which the offense for Violation of Section 3(e) may be committed in any of the following:

1. Through evident bad faith;
2. Through manifest partiality;
3. Through gross inexcusable negligence.

Proof of the existence of any of these modes in connection with the prohibited acts under said section of the law should suffice to warrant conviction.[10]

However, the Sandiganbayan also held that even granting that the amendment of the information be formal or substantial,

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[8] *Rollo,* pp. 59-60.

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

[10] Citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655.

the prosecution could still effect the same in the event that the accused had not yet undergone a permanent arraignment. And since the arraignment of petitioner on 13 March 2001 was merely "provisional," then the prosecution may still amend the information either in form or in substance.

Petitioner filed a Motion for Reconsideration, which was denied by the Sandiganbayan in its Resolution of 3 May 2004. Hence this petition.

The Issues

The issues raised in this petition are:

1. WHETHER THE SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING THE AMENDED INFORMATION; AND

2. WHETHER THE SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FURTHER PROCEEDING WITH THE CASE DESPITE THE VIOLATION OF THE RIGHT OF THE ACCUSED TO A SPEEDY TRIAL.

The Ruling of the Court

The petition has no merit.

On Whether the Sandiganbayan Should Admit the Amended Information

Section 14 of Rule 110 of the Revised Rules of Criminal Procedure provides:

> Sec. 14. *Amendment or Substitution.*— A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.
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> xxx xxx xxx

Petitioner contends that under the above section, only a formal amendment of the information may be made after a plea. The

rule does not distinguish between a plea made during a "provisional" or a "permanent" arraignment. Since petitioner already entered a plea of "not guilty" during the 13 March 2001 arraignment, then the information may be amended only in form.

An arraignment is that stage where in the mode and manner required by the rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him.[11] The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily.[12]

The practice of the Sandiganbayan of conducting "provisional" or "conditional" arraignments is not sanctioned by the Revised Internal Rules of the Sandiganbayan or by the regular Rules of Court.[13] However, in *People v. Espinosa*,[14] this Court tangentially recognized such practice, provided that the alleged conditions attached thereto should be "unmistakable, express, informed and enlightened." Moreover, the conditions must be expressly stated in the Order disposing of the arraignment; otherwise, the arraignment should be deemed simple and unconditional.[15]

In the present case, the arraignment of petitioner is reflected in the Minutes of the Sandiganbayan Proceedings dated 13 March 2001 which merely states that the "[a]ccused when arraigned entered a plea of not guilty. The Motion to Travel is granted subject to the usual terms and conditions imposed on accused persons travelling (sic) abroad."[16] In the Resolution of 16 April

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[11] *Borja v. Mendoza*, 168 Phil. 83, 87 (1977).

[12] *People v. Espinosa*, 456 Phil. 507, 516 (2003).

[13] *Id*.

[14] *Id.*; *Cabo v. Sandiganbayan*, G.R. No. 169509, 16 June 2006, 491 SCRA 264, 273.

[15] *Id.* at 274.

[16] Records, Vol. I, p. 192.

2001,[17] the Sandiganbayan mentioned the arraignment of petitioner and granted his Urgent Motion to Amend Motion to Lift Hold Departure Order and to be Allowed to Travel, setting forth the conditions attendant thereto which, however, were limited only to petitioner's itinerary abroad; the setting up of additional bailbond; the required appearance before the clerk of court; and written advice to the court upon return to the Philippines. Nothing on record is indicative of the provisional or conditional nature of the arraignment. Hence, following the doctrine laid down in *Espinosa*, the arraignment of petitioner should be deemed simple and unconditional.

The rules mandate that after a plea is entered, only a formal amendment of the Information may be made but with leave of court and only if it does not prejudice the rights of the accused.

Petitioner contends that replacing "gross neglect of duty" with "gross inexcusable negligence" is a substantial amendment of the Information which is prejudicial to his rights. He asserts that under the amended information, he has to present evidence that he did not act with "gross inexcusable negligence," evidence he was not required to present under the original information. To bolster his argument, petitioner refers to the 10 February 2004 Resolution of the Sandiganbayan which ruled that the change "constitutes substantial amendment considering that the possible defense of the accused may divert from the one originally intended."[18]

We are not convinced.

Petitioner is charged with violation of Section 3(e) of RA 3019 which provides as follows:

SEC. 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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[17] *Id.* at 198-199.

[18] *Rollo,* pp. 12 and 28.

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

This crime has the following essential elements:[19]

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence."[20] In *Uriarte v. People*,[21] this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[22] "Evident bad faith" connotes not only

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[19] *Uriarte v. People*, G.R. No. 169251, 20 December 2006, 511 SCRA 471, 486, citing *Santos v. People*, G.R. No. 161877, 23 March 2006, 485 SCRA 185, 194; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, 25 October 2004, 441 SCRA 377, 386; and *Jacinto v. Sandiganbayan*, G.R. No. 84571, 2 October 1989, 178 SCRA 254, 259.

[20] *Gallego v. Sandiganbayan*, 201 Phil. 379, 383 (1982).

[21] *Supra* note 19.

[22] *Id.*, citing *Alvizo v. Sandiganbayan*, 454 Phil. 34, 72 (2003).

bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[23] "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[24] "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[25]

The original information filed against petitioner alleged that he acted with "evident bad faith and manifest partiality and or (sic) gross neglect of duty." The amended information, on the other hand, alleges that petitioner acted with "evident bad faith and manifest partiality and/or gross inexcusable negligence." **Simply, the amendment seeks to replace "gross neglect of duty" with "gross inexcusable negligence."** Given that these two phrases fall under different paragraphs of RA 3019—specifically, "gross neglect of duty" is under Section 3(f) while "gross inexcusable negligence" is under Section 3(e) of the statute—the question remains whether or not the amendment is substantial and prejudicial to the rights of petitioner.

The test as to when the rights of an accused are prejudiced by the amendment of a complaint or information is when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the complaint or information as amended.[26] On the other hand, an amendment which merely states with additional precision something which is already contained in the original

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[23] *Id.*, citing *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

[24] *Id.*, citing *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).

[25] *Id.*, citing *Sistoza v. Desierto, supra*.

[26] *People v. Montenegro*, G.R. No. 45772, 25 March 1988, 159 SCRA 236, 241, citing Sec. 2, CJS, Sec. 240, pp. 1249-1250.

information and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at anytime.[27]

In this case, the amendment entails the deletion of the phrase "gross neglect of duty" from the Information. Although this may be considered a substantial amendment, the same is allowable even after arraignment and plea being beneficial to the accused.[28] As a replacement, "gross inexcusable negligence" would be included in the Information as a modality in the commission of the offense. This Court believes that the same constitutes an amendment only in form. In *Sistoza v. Desierto*,[29] the Information charged the accused with violation of Section 3(e) of RA 3019, but specified only "manifest partiality" and "evident bad faith" as the modalities in the commission of the offense charged. "Gross inexcusable negligence" was not mentioned in the Information. Nonetheless, this Court held that the said section is committed by *dolo* or *culpa*, and although the Information may have alleged only one of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.[30] In so ruling, this Court applied by analogy the pronouncement in *Cabello v. Sandiganbayan*[31] where an accused charged with willful malversation was validly convicted of the same felony of malversation through negligence when the evidence merely sustained the latter mode of perpetrating the offense. The Court held that a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense. Thus, we hold that the inclusion of "gross inexcusable negligence" in the Information, which merely alleges "manifest partiality" and "evident bad faith" as

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[27] *Id.*, citing *United States v. Alabot*, 38 Phil. 698 (1918).

[28] *Fronda-Baggao v. People*, G.R. No. 151785, 10 December 2007, 539 SCRA 531, 535, citing *Matalam v. Sandiganbayan*, G.R. No. 165751, 12 April 2005, 455 SCRA 736, 746 and *People v. Janairo*, 370 Phil. 59 (1999).

[29] *Supra* note 23.

[30] *Id.* at 325.

[31] 274 Phil. 369 (1991).

modalities in the commission of the crime under Section 3(e) of RA 3019, is an amendment in form.

On Whether Petitioner's Right to a Speedy Trial was Violated

Petitioner contends that the complaint-affidavit against him was filed on 15 June 1992, but it was resolved by the Office of the Ombudsman-Mindanao only on 26 February 1999, or after a period of almost seven (7) years. Four (4) years thereafter, the SPO, upon reinvestigation of the case, recommended that the case against petitioner be dismissed for lack of probable cause, but this recommendation was denied by the Ombudsman. A Motion for Leave to Admit Amended Information was later filed by the prosecution and granted by the Sandiganbayan in the questioned Resolution of 10 February 2004. Thus, petitioner maintains that it took the Office of the Ombudsman twelve (12) years since the initial filing of the complaint-affidavit in 1992 to charge accused with the offense under the Amended Information, in violation of petitioner's right to a speedy trial.

Petitioner's contentions are futile.

The right of an accused to a speedy trial is guaranteed under Section 16, Article III of the Philippine Constitution which provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right, however, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.[32] A simple mathematical computation of the period involved is not sufficient. We concede that judicial proceedings do not exist in a vacuum and must contend with the realities of everyday life.[33]

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[32] *Lumanlaw v. Peralta, Jr.*, G.R. No. 164953, 13 February 2006, 482 SCRA 396, 410, citing *Gonzales v. Sandiganbayan*, G.R. No. 94750, 16 July 1991, 199 SCRA 298, 307.

[33] *Id*.

After reviewing the records of the case, we believe that the right of petitioner to a speedy trial was not infringed upon. The issue on the inordinate delay in the resolution of the complaint-affidavit filed against petitioner and his co-accused and the filing of the original Information against petitioner was raised in petitioner's Motion to Dismiss, and was duly addressed by the Sandiganbayan in its Resolution denying the said motion. It appears that the said delays were caused by the numerous motions for extension of time to file various pleadings and to reproduce documents filed by petitioner's co-accused, and that no actual preliminary investigation was conducted on petitioner. The Sandiganbayan properly held that a reinvestigation of the case as to petitioner was in order. Although the reinvestigation inadvertently resulted to further delay in the proceedings, this process could not have been dispensed with as it was done for the protection of the rights of petitioner himself. It is well-settled that although the conduct of an investigation may hold back the progress of a case, it is necessary so that the accused's right will not be compromised or sacrificed at the altar of expediency.[34] The succeeding events appear to be parts of a valid and regular course of judicial proceedings not attended by delays which can be considered vexatious, capricious, oppressive, or unjustified. Hence, petitioner's contention of violation of his right to a speedy trial must fail.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the Resolutions dated 10 February 2004 and 3 May 2004 of the Sandiganbayan in Criminal Case No. 25231.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Brion,*[*] *JJ.,* concur.

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[34] *Matalam v. Sandiganbayan*, G.R. No. 165751, 12 April 2005, 455 SCRA 736, 752.

[*] Designated member per Special Order No. 570.

EN BANC

[G.R. No. 178160. February 26, 2009]

BASES CONVERSION AND DEVELOPMENT AUTHORITY, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7227 (BASES CONVERSION AND DEVELOPMENT ACT OF 1992); BASES CONVERSION AND DEVELOPMENT AUTHORITY; BOARD MEMBERS AND FULL-TIME CONSULTANTS; NOT ENTITLED TO YEAR-END BENEFITS; EXPLAINED. — Section 9 of RA No. 7227 states that Board members are entitled to a *per diem*: "**Members of the Board shall receive a *per diem* of not more than Five thousand pesos (₱5,000) for every board meeting: *Provided, however*, That the *per diem* collected per month does not exceed the equivalent of four (4) meetings:** *Provided, further*, That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase." Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; and limits the total amount of *per diem* for one month to not more than four meetings. In *Magno v. Commission on Audit, Cabili v. Civil Service Commission, De Jesus v. Civil Service Commission, Molen, Jr. v. Commission on Audit,* and *Baybay Water District v. Commission on Audit,* the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other**. In *Baybay Water District*, the Court held that: By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, x x x the law quite clearly indicates that directors x x x are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form. Also, DBM Circular Letter No. 2002-2 states that, "*Members of the Board of Directors of agencies are not salaried officials*

of the government. As non-salaried officials they are not entitled to PERA, ADCOM, **YEB** and retirement benefits *unless expressly provided by law*." RA No. 7227 does not state that the Board members are entitled to a year-end benefit. With regard to the full-time consultants, DBM Circular Letter No. 2002-2 states that, "**YEB** and retirement benefits, **are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid**." The full-time consultants are not part of the BCDA personnel and are not paid the basic salary. The full-time consultants' consultancy contracts expressly state that there is no employer-employee relationship between the BCDA and the consultants, and that the BCDA shall pay the consultants a contract price. x x x Since full-time consultants are not salaried employees of BCDA, they are not entitled to the year-end benefit which is a "**personnel** benefit granted **in addition to salaries**" and which is "paid **only when the basic salary is also paid**."

2. ID.; CONSTITUTIONAL LAW; CONSTITUTION; ARTICLE II OF THE CONSTITUTION, NOT A SOURCE OF ENFORCEABLE RIGHTS. — Article II of the Constitution is entitled Declaration of Principles and State Policies. By its very title, Article II is a statement of general ideological principles and policies. It is not a source of enforceable rights. In *Tondo Medical Center Employees Association v. Court of Appeals*, the Court held that **Sections 5 and 18, Article II of the Constitution are not self-executing provisions**. In that case, the Court held that "Some of the constitutional provisions invoked in the present case were taken from Article II of the Constitution — specifically, Sections 5 x x x and 18 — the provisions of which the Court categorically ruled to be non self-executing."

3. ID.; STATUTES; PRESUMPTION OF CONSTITUTIONALITY; ACCORDED TO LAWS ENACTED BY CONGRESS; CASE AT BAR. — Every presumption should be indulged in favor of the constitutionality of RA No. 7227 and the burden of proof is on the BCDA to show that there is a clear and unequivocal breach of the Constitution. In *Abakada Guro Party List v. Purisima*, the Court held that: "A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and unequivocal one. To

invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." The BCDA failed to show that RA No. 7227 unreasonably singled out Board members and full-time consultants in the grant of the year-end benefit. It did not show any clear and unequivocal breach of the Constitution. The claim that there is no difference between regular officials and employees, and Board members and full-time consultants because both groups "have mouths to feed and stomachs to fill" is fatuous. Surely, persons are not automatically similarly situated — thus, automatically deserving of equal protection of the laws — just because they both "have mouths to feed and stomachs to fill." Otherwise, the existence of a substantial distinction would become forever highly improbable.

4. ID.; ID.; REPUBLIC ACT NO. 7227 (BASES CONVERSION AND DEVELOPMENT ACT OF 1992); BASES CONVERSION AND DEVELOPMENT AUTHORITY; BOARD MEMBERS; ENTITLED ONLY TO THE PER DIEMS AUTHORIZED BY LAW AND NO OTHER. — A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. Section 9 states: "**Members of the Board shall receive a *per diem* of not more than Five thousand pesos (₱5,000) for every board meeting: *Provided, however,* That the *per diem* collected per month does not exceed the equivalent of four (4) meetings:** *Provided, further*, That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase." Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; limits the total amount of *per diem* for one month to not more than four meetings; and does not state that Board members may receive other benefits. In *Magno*, *Cabili*, *De Jesus*, *Molen, Jr.*, and *Baybay Water District*, the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other.** The specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits

lead the Court to the inference that Congress intended to limit the compensation of Board members to the *per diem* authorized by law and no other. *Expressio unius est exclusio alterius*. Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.

5. ID.; ID.; HOW CONSTRUED. — When a statute is susceptible of two interpretations, the Court must "adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective." The Court always presumes that Congress intended to enact sensible statutes.

6. ID.; CONSTITUTIONAL LAW; CONSTITUTION; STATE; ESTOPPEL DOES NOT LIE AGAINST THE STATE. — The State is not estopped from correcting a public officer's erroneous application of a statute, and an unlawful practice, no matter how long, cannot give rise to any vested right.

7. ID.; STATUTES; REPUBLIC ACT NO. 7227 (BASES CONVERSION AND DEVELOPMENT ACT OF 1992); BASES CONVERSION AND DEVELOPMENT AUTHORITY; BOARD MEMBERS AND FULL-TIME CONSULTANTS; YEAR-END BENEFITS RECEIVED IN GOOD FAITH NEED NOT BE REFUNDED; CASE AT BAR. — The Court, x x x notes that the Board members and full-time consultants received the year-end benefit in good faith. The Board members relied on (1) Section 10 of RA No. 7227 which authorized the Board to adopt a compensation and benefit scheme; (2) the fact that RA No. 7227 does not expressly prohibit Board members from receiving benefits other than the *per diem* authorized by law; and (3) President Ramos' approval of the new compensation and benefit scheme which included the granting of a year-end benefit to each contractual employee, regular permanent employee, and Board member. The full-time consultants relied on Section 10 of RA No. 7227 which authorized the Board to adopt a compensation and benefit scheme. There is no proof that the Board members and full-time consultants knew that their receipt of the year-end benefit was unlawful. In keeping with *Magno, De Jesus, Molen, Jr.*, and *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*, the Board members and full-time consultants are not

required to refund the year-end benefits they have already received.

APPEARANCES OF COUNSEL

Government Corporate Counsel for BCDA.
Elizabeth S. Zosa for COA.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for *certiorari*[1] with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction. The petition seeks to nullify Decision No. 2007-020[2] dated 12 April 2007 of the Commission on Audit (COA).

The Facts

On 13 March 1992, Congress approved Republic Act (RA) No. 7227[3] creating the Bases Conversion and Development Authority (BCDA). Section 9 of RA No. 7227 states that the BCDA Board of Directors (Board) shall exercise the powers and functions of the BCDA. Under Section 10, the functions of the Board include the determination of the organizational structure and the adoption of a compensation and benefit scheme at least equivalent to that of the Bangko Sentral ng Pilipinas (BSP). Accordingly, the Board determined the organizational structure of the BCDA and adopted a compensation and benefit scheme for its officials and employees.

On 20 December 1996, the Board adopted a new compensation and benefit scheme which included a ₱10,000 year-end benefit

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

[2] *Rollo*, pp. 37-44.

[3] Otherwise known as the "Bases Conversion and Development Act of 1992."

granted to each contractual employee, regular permanent employee, and Board member. In a memorandum[4] dated 25 August 1997, Board Chairman Victoriano A. Basco (Chairman Basco) recommended to President Fidel V. Ramos (President Ramos) the approval of the new compensation and benefit scheme. In a memorandum[5] dated 9 October 1997, President Ramos approved the new compensation and benefit scheme.

In 1999, the BSP gave a ₱30,000 year-end benefit to its officials and employees. In 2000, the BSP increased the year-end benefit from ₱30,000 to ₱35,000. Pursuant to Section 10 of RA No. 7227 which states that the compensation and benefit scheme of the BCDA shall be at least equivalent to that of the BSP, the Board increased the year-end benefit of BCDA officials and employees from ₱10,000 to ₱30,000. Thus in 2000 and 2001, BCDA officials and employees received a ₱30,000 year-end benefit, and, on 1 October 2002, the Board passed Resolution No. 2002-10-193[6] approving the release of a ₱30,000 year-end benefit for 2002.

Aside from the contractual employees, regular permanent employees, and Board members, the full-time consultants of the BCDA also received the year-end benefit.

On 20 February 2003, State Auditor IV Corazon V. Español of the COA issued Audit Observation Memorandum (AOM) No. 2003-004[7] stating that the grant of year-end benefit to Board members was contrary to Department of Budget and Management (DBM) Circular Letter No. 2002-2 dated 2 January 2002. In Notice of Disallowance (ND) No. 03-001-BCDA-(02)[8] dated 8 January 2004, Director IV Rogelio D. Tablang (Director Tablang), COA, Legal and Adjudication Office-Corporate, disallowed the grant of year-end benefit to the Board

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[4] *Rollo*, pp. 45-51.

[5] *Id.* at 52.

[6] *Id.* at 67.

[7] *Id.* at 73.

[8] *Id.* at 78-81.

members and full-time consultants. In Decision No. 2004-013[9] dated 13 January 2004, Director Tablang "concurred" with AOM No. 2003-004 and ND No. 03-001-BCDA-(02).

In a letter[10] dated 20 February 2004, BCDA President and Chief Executive Officer Rufo Colayco requested the reconsideration of Decision No. 2004-013. In a Resolution[11] dated 22 June 2004, Director Tablang denied the request. The BCDA filed a notice of appeal[12] dated 8 September 2004 and an appeal memorandum[13] dated 23 December 2004 with the COA.

The COA's Ruling

In Decision No. 2007-020,[14] the COA affirmed the disallowance of the year-end benefit granted to the Board members and full-time consultants and held that the presumption of good faith did not apply to them. The COA stated that:

> The granting of YEB x x x is not without x x x limitation. DBM Circular Letter No. 2002-02 dated January 2, 2002 stating, *viz:*
>
> "2.0 To clarify and address issues/requests concerning the same, the following compensation policies are hereby reiterated:
>
> 2.1 PERA, ADCOM, YEB and retirement benefits, are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid.
>
> 2.2 Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.
>
> 2.3 Department Secretaries, Undersecretaries and Assistant Secretaries who serve as *Ex-officio* Members of the Board of Directors are not entitled to any remuneration in line with

[9] *Id.* at 89-91.

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

[11] *Id.* at 94-98.

[12] *Id.* at 99.

[13] *Id.* at 100-110.

[14] *Id.* at 37-44.

> the Supreme Court ruling that their services in the Board are already paid for and covered by the remuneration attached to their office." (underscoring ours)

Clearly, as stated above, **the members and *ex-officio* members of the Board of Directors are not entitled to YEB, they being not salaried officials of the government.** The same goes with **full time consultants** wherein no employer-employee relationships exist between them and the BCDA. Thus, the whole amount paid to them totaling ₱342,000 is properly disallowed in audit.

Moreover, the presumption of good faith may not apply to the members and *ex-officio* members of the Board of Directors because despite the earlier clarification on the matter by the DBM thru the issuance on January 2, 2002 of DBM Circular Letter No. 2002-02, still, the BCDA Board of Directors enacted Resolution No. 2002-10-93 on October 1, 2002 granting YEB to the BCDA personnel including themselves. Full time consultants, being non-salaried personnel, are also not entitled to such presumption since they knew from the very beginning that they are only entitled to the amount stipulated in their contracts as compensation for their services. Hence, they should be made to refund the disallowed YEB.[15] (Boldfacing in the original)

Hence, this petition.

The Court's Ruling

The Board members and full-time consultants of the BCDA are not entitled to the year-end benefit.

First, the BCDA claims that the Board can grant the year-end benefit to its members and full-time consultants because, under Section 10 of RA No. 7227, the functions of the Board include the adoption of a compensation and benefit scheme.

The Court is not impressed. The Board's power to adopt a compensation and benefit scheme is not unlimited. Section 9 of RA No. 7227 states that Board members are entitled to a *per diem*:

Members of the Board shall receive a *per diem* of not more than Five thousand pesos (₱5,000) for every board meeting: *Provided,*

[15] *Id.* at 42-43.

***however*, That the *per diem* collected per month does not exceed the equivalent of four (4) meetings**: *Provided, further*, That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase. (Emphasis supplied)

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; and limits the total amount of *per diem* for one month to not more than four meetings. In *Magno v. Commission on Audit*,[16] *Cabili v. Civil Service Commission*,[17] *De Jesus v. Civil Service Commission*,[18] *Molen, Jr. v. Commission on Audit*,[19] and *Baybay Water District v. Commission on Audit*,[20] the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other**. In *Baybay Water District*, the Court held that:

> By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, x x x the law quite clearly indicates that directors x x x are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form.[21]

Also, DBM Circular Letter No. 2002-2 states that, "**Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials they are not entitled to** PERA, ADCOM, **YEB** and retirement benefits **unless expressly provided by law**." RA No. 7227 does not state that the Board members are entitled to a year-end benefit.

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[16] G.R. No. 149941, 28 August 2007, 531 SCRA 339, 349.

[17] G.R. No. 156503, 22 June 2006, 492 SCRA 252, 260.

[18] G.R. No. 156559, 30 September 2005, 471 SCRA 624, 627.

[19] G.R. No. 150222, 18 March 2005, 453 SCRA 769, 778.

[20] 425 Phil. 326 (2002).

[21] *Id.* at 337.

With regard to the full-time consultants, DBM Circular Letter No. 2002-2 states that, "**YEB** and retirement benefits, **are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid**." The full-time consultants are not part of the BCDA personnel and are not paid the basic salary. The full-time consultants' consultancy contracts expressly state that there is no employer-employee relationship between the BCDA and the consultants, and that the BCDA shall pay the consultants a contract price. For example, the consultancy contract[22] of a certain Dr. Faith M. Reyes states:

SECTION 2. **Contract Price**. For and in consideration of the services to be performed by the CONSULTANT (16 hours/week), BCDA shall pay her the amount of **TWENTY THOUSAND PESOS and 00/100 (₱20,000.00)**, Philippine currency, per month.

xxx xxx xxx

SECTION 4. **Employee-Employer Relationship**. It is understood that no employee-employer relationship shall exist between BCDA and the CONSULTANT.

SECTION 5. **Period of Effectivity**. This CONTRACT shall have an effectivity period of one (1) year, from January 01, 2002 to December 31, 2002, unless sooner terminated by BCDA in accordance with Section 6 below.

SECTION 6. **Termination of Services**. BCDA, in its sole discretion may opt to terminate this CONTRACT when it sees that there is no more need for the services contracted for. (Boldfacing in the original)

Since full-time consultants are not salaried employees of BCDA, they are not entitled to the year-end benefit which is a "**personnel** benefit granted **in addition to salaries**" and which is "paid **only when the basic salary is also paid**."

Second, the BCDA claims that the Board members and full-time consultants should be granted the year-end benefit because the granting of year-end benefit is consistent with Sections 5 and 18, Article II of the Constitution. Sections 5 and 18 state:

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[22] *Rollo*, pp. 158-159.

Section 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all people of the blessings of democracy.

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

The Court is not impressed. Article II of the Constitution is entitled Declaration of Principles and State Policies. By its very title, Article II is a statement of general ideological principles and policies. It is not a source of enforceable rights.[23] In *Tondo Medical Center Employees Association v. Court of Appeals*,[24] the Court held that **Sections 5 and 18, Article II of the Constitution are not self-executing provisions**. In that case, the Court held that "Some of the constitutional provisions invoked in the present case were taken from Article II of the Constitution — specifically, Sections 5 x x x and 18 — the provisions of which the Court categorically ruled to be non self-executing."

Third, the BCDA claims that the denial of year-end benefit to the Board members and full-time consultants violates Section 1, Article III of the Constitution.[25] More specifically, the BCDA claims that there is no substantial distinction between regular officials and employees on one hand, and Board members and full-time consultants on the other. The BCDA states that "there is here only a distinction, but no difference" because both "have undeniably one common goal as humans, that is x x x 'to keep body and soul together'" or, "[d]ifferently put, both have mouths to feed and stomachs to fill."

The Court is not impressed. **Every presumption should be indulged in favor of the constitutionality of RA No.**

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[23] *Pamatong v. Commission on Elections*, G.R. No. 161872, 13 April 2004, 427 SCRA 96, 100-101; *Tañada v. Angara*, 338 Phil. 546, 580-583 (1997).

[24] G.R. No. 167324, 17 July 2007, 527 SCRA 746, 764-765.

[25] Section 1, Article III of the Constitution states that, "No person shall be x x x denied the equal protection of the laws."

7227 and the burden of proof is on the BCDA to show that there is a clear and unequivocal breach of the Constitution.[26] In *Abakada Guro Party List v. Purisima*,[27] the Court held that:

> A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and unequivocal one. To invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.

The BCDA failed to show that RA No. 7227 unreasonably singled out Board members and full-time consultants in the grant of the year-end benefit. It did not show any clear and unequivocal breach of the Constitution. The claim that there is no difference between regular officials and employees, and Board members and full-time consultants because both groups "have mouths to feed and stomachs to fill" is fatuous. Surely, persons are not automatically similarly situated — thus, automatically deserving of equal protection of the laws — just because they both "have mouths to feed and stomachs to fill." Otherwise, the existence of a substantial distinction would become forever highly improbable.

Fourth, the BCDA claims that the Board can grant the year-end benefit to its members and the full-time consultants because RA No. 7227 does not expressly prohibit it from doing so.

The Court is not impressed. A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. Section 9 states:

> **Members of the Board shall receive a *per diem* of not more than Five thousand pesos (₱5,000) for every board meeting: *Provided, however*, That the *per diem* collected per month does not exceed the equivalent of four (4) meetings**: *Provided, further*, That the

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[26] *British American Tobacco v. Camacho*, G.R. No. 163583, 20 August 2008; *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 562 (2004).

[27] G.R. No. 166715, 14 August 2008.

amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase. (Emphasis supplied)

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; limits the total amount of *per diem* for one month to not more than four meetings; and does not state that Board members may receive other benefits. In *Magno*,[28] *Cabili*,[29] *De Jesus*,[30] *Molen, Jr.*,[31] and *Baybay Water District*,[32] the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other**.

The specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits lead the Court to the inference that Congress intended to limit the compensation of Board members to the *per diem* authorized by law and no other. *Expressio unius est exclusio alterius.* Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.[33] For example, Congress' intention to allow Board members to receive other benefits besides the *per diem* authorized by law is expressly stated in Section 1 of RA No. 9286:[34]

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[28] *Supra* note 16.

[29] *Supra* note 17.

[30] *Supra* note 18.

[31] *Supra* note 19.

[32] *Supra* note 20.

[33] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89, 107-109; *Republic of the Philippines v. Honorable Estenzo*, 188 Phil. 61, 65-66 (1980).

[34] An Act Further Amending Presidential Decree No. 198, Otherwise Known As "The Provincial Water Utilities Act of 1973," as amended.

SECTION 1. Section 13 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

"SEC. 13. *Compensation*. — Each director shall receive *per diem* to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive *per diems* in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

Any *per diem* in excess of One hundred fifty pesos (₱150.00) shall be subject to the approval of the Administration. **In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration**." (Emphasis supplied)

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what Congress omitted, whether intentionally or unintentionally.[35]

When a statute is susceptible of two interpretations, the Court must "adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective."[36] The Court always presumes that Congress intended to enact sensible statutes.[37] If the Court were to rule that the Board could grant the year-end benefit to its members, Section 9 of RA No. 7227 would become inoperative and ineffective — the specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting; the specification that the *per diem* received per month shall not exceed the equivalent of four meetings; the vesting of the power to increase the amount of *per diem* in the President; and the limitation that the amount of *per diem* shall not be increased within two years from its last increase would all become useless because the Board could always grant its members other benefits.

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[35] *Canet v. Mayor Decena*, 465 Phil. 325, 332-333 (2004).

[36] *Sesbreño v. Central Board of Assessment Appeals*, 337 Phil. 89, 103-104 (1997).

[37] *In re Guariña*, 24 Phil. 37, 47 (1918).

With regard to the full-time consultants, DBM Circular Letter No. 2002-2 states that, "**YEB** and retirement benefits, **are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid**." The full-time consultants are not part of the BCDA personnel and are not paid the basic salary. The full-time consultants' consultancy contracts expressly state that there is no employer-employee relationship between BCDA and the consultants and that BCDA shall pay the consultants a contract price. Since full-time consultants are not salaried employees of the BCDA, they are not entitled to the year-end benefit which is a "**personnel** benefit granted **in addition to salaries**" and which is "paid **only when the basic salary is also paid**."

Fifth, the BCDA claims that the Board members and full-time consultants are entitled to the year-end benefit because (1) President Ramos approved the granting of the benefit to the Board members, and (2) they have been receiving it since 1997.

The Court is not impressed. The State is not estopped from correcting a public officer's erroneous application of a statute, and an unlawful practice, no matter how long, cannot give rise to any vested right.[38]

The Court, however, notes that the Board members and full-time consultants received the year-end benefit in good faith. The Board members relied on (1) Section 10 of RA No. 7227 which authorized the Board to adopt a compensation and benefit scheme; (2) the fact that RA No. 7227 does not expressly prohibit Board members from receiving benefits other than the *per diem* authorized by law; and (3) President Ramos' approval of the new compensation and benefit scheme which included the granting of a year-end benefit to each contractual employee,

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[38] *Veterans Federation of the Philippines v. Reyes*, G.R. No. 155027, 28 February 2006, 483 SCRA 526, 556; *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*, G.R. No. 150769, 31 August 2004, 437 SCRA 371, 390-391.

regular permanent employee, and Board member. The full-time consultants relied on Section 10 of RA No. 7227 which authorized the Board to adopt a compensation and benefit scheme. There is no proof that the Board members and full-time consultants knew that their receipt of the year-end benefit was unlawful. In keeping with *Magno*,[39] *De Jesus*,[40] *Molen, Jr.*,[41] and *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*,[42] the Board members and full-time consultants are not required to refund the year-end benefits they have already received.

WHEREFORE, the petition is *PARTIALLY GRANTED*. Commission on Audit Decision No. 2007-020 dated 12 April 2007 is *AFFIRMED* with the *MODIFICATION* that the Board members and full-time consultants of the Bases Conversion and Development Authority are not required to refund the year-end benefits they have already received.

SO ORDERED.

Quisumbing, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Puno, C.J., no part due to relationship.

Ynares-Santiago, J., on official leave per Special Order No. 563.

Tinga, J., on official leave per Special Order No. 571.

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[39] *Supra* note 16.

[40] *Supra* note 18.

[41] *Supra* note 19.

[42] G.R. No. 150769, 31 August 2004, 437 SCRA 371, 391.

SECOND DIVISION

[A.C. No. 7084. February 27, 2009]

CONRADO G. FERNANDEZ, *complainant, vs.* **ATTY. MARIA ANGELICA P. DE RAMOS-VILLALON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER, AS AN OFFICER OF THE COURT, HAS A DUTY TO BE TRUTHFUL IN ALL HIS DEALINGS. — A lawyer, as an officer of the court, has a duty to be truthful in all his dealings. However, this duty does not require that the lawyer advance matters of defense on behalf of his or her client's opponent. A lawyer is his or her client's advocate; while duty-bound to utter no falsehood, an advocate is not obliged to build the case for his or her client's opponent.

2. REMEDIAL LAW; EVIDENCE; RETRACTIONS; SHOULD BE EXAMINED CLOSELY BY CONSIDERING THE ORIGINAL, THE NEW STATEMENTS AND THE SURROUNDING CIRCUMSTANCES BASED ON THE RULES OF EVIDENCE. — As a rule, we view retractions with caution; they can be bought and obtained through threats, intimidation, or monetary consideration. The better rule is to examine them closely by considering the original, the new statements and the surrounding circumstances, based on the rules of evidence.

3. LEGAL ETHICS; ATTORNEYS; DISBARMENT; IN DISBARMENT PROCEEDINGS, THE BURDEN OF PROOF RESTS ON THE COMPLAINANT. — In disbarment proceedings, the burden of proof rests on the complainant. Considering the gravity of the penalty of disbarment or suspension as a member of the Bar, a lawyer may only be disbarred or suspended if there is clear, convincing, and satisfactory proof that he or she committed transgressions defined by the rules as grounds to strip him or her of his professional license.

APPEARANCES OF COUNSEL

Rolando M. Castro for complainant.
Bondal Law Office for respondent.

D E C I S I O N

BRION, *J.*:

For our resolution is this administrative case filed by complainant Conrado G. Fernandez (*Fernandez*) against Atty. Maria Angelica P. De Ramos-Villalon (*Atty. Villalon*). The complainant was the respondent in Civil Case No. 05-1017, in which Carlos O. Palacios (*Palacios*) sought to nullify a Deed of Donation he purportedly executed in favor of Fernandez.[1] The respondent in this administrative action, Atty. Villalon, was Palacios' counsel in the early part of the case; she withdrew from the case after her appointment as prosecutor of Quezon City.[2]

A brief summary of Civil Case No. 05-1017 is in order to put this administrative complaint in proper context.

Palacios, in his Complaint in Civil Case No. 05-1017, alleged that he was the owner of a lot covered by Transfer Certificate of Title (*TCT*) No. 178587 located in Barangay San Lorenzo, Makati City.[3] He allegedly inherited the lot from his mother. Sometime in June 2004, he became aware that his lot was being eyed by a land-grabbing syndicate. The syndicate attempted to obtain a copy of TCT No. 178587 by pretending to be Carlos Palacios, Jr., and by filing a Petition for Judicial Reconstitution of Lost Owner's Duplicate Original Copy of TCT No. 178587. The petition was docketed as LRC Case No. M-4524.[4]

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[1] *Rollo,* pp. 41-42.

[2] Petition for Review, p. 2.

[3] *Rollo,* pp. 9-21.

[4] *Rollo,* p. 11.

Palacios received information that Fernandez could help him oppose the syndicate's petition. Thus, Palacios approached Fernandez, and they eventually succeeded in causing the withdrawal of LRC Case No. M-4524, with the assistance of a certain Atty. Augusto P. Jimenez, Jr. Palacios allegedly agreed to pay Fernandez ₱2,000,000.00 for the services he rendered in LRC Case No. M-4524.

On September 27, 2005, when Palacios visited the Village Administrator of the San Lorenzo Village Association, he bumped into Mrs. Jocelyn Lirio who expressed her interest in Palacios' San Lazaro property. She had heard it was being sold by Fernandez. Palacios was surprised by Mrs. Lirio's story, as he had no intention of selling the property. Upon investigation, he discovered that Fernandez had falsified a Deed of Donation that he (Palacios) purportedly executed in Fernandez' favor. This Deed was duly registered, and on the strength of the purported donation, TCT No. 178587 in Palacios' name was cancelled, and a new TCT (TCT No. 220869) was issued in Fernandez' name.

Palacios then employed the services of respondent Atty. Villalon to file a Complaint for the declaration of nullity of the Deed of Donation that became the basis for the issuance of a title in Fernandez' name.[5] This complaint was subsequently amended to implead Romeo Castro, Atty. Augusto P. Jimenez, Jr., Levy R. De Dios, and Rosario T. Abobo.[6]

In his Answer, Fernandez claimed that the transfer of title in his name was proper on account of an existing Deed of Absolute Sale dated January 12, 2005 between him and Palacios. He also alleged that it was Palacios who falsified a Deed of Donation by forging their signatures and having it notarized;[7] Palacios did this in order to cheat the government by paying only the donor's tax, which was lower than the capital gains tax he would have paid had the transaction been represented

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[5] *Rollo*, *supra* note 2, pp. 9-21.

[6] *Rollo*, pp. 22-40.

[7] *Rollo*, pp. 48-54.

as a sale. He additionally alleged that Palacios intended to falsify the Deed of Donation in order to have a ground for the annulment of the new TCT issued in favor of Fernandez and, ultimately, to recover the property.

On March 2, 2006, Fernandez filed a complaint for disbarment against Atty. Villalon for violation of Rule 1.01,[8] Rule 7.03,[9] Rule 10.01,[10] Rule 10.02,[11] and Rule 10.03[12] of the Canons of Professional Responsibility.[13] Fernandez alleged that Atty. Villalon, acting as Palacios' counsel, deceitfully:

1. suppressed and excluded in the Original and Amended Complaint her knowledge about the existence of the Deed of Absolute Sale dated January 12, 2005;

2. used the fake and spurious Deed of Donation to deceive the court into trying Civil Case No. 05-1071, the action for the annulment of TCT No. 220869, despite her knowledge of the existence of the Deed of Absolute Sale;

3. committed misrepresentations as follows: to verify whether the attached Deed of Absolute Sale was properly notarized, the respondent Villalon personally inquired before the

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

[9] Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[10] Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[11] Rule 10.02 — A lawyer shall not knowingly misquote or mispresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

[12] Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

[13] *Rollo*, pp. 1-8.

notarial section of the Regional Trial Court (*RTC*) of Quezon City thru a letter-request, whether a record of the deed existed in the said office; in the letter-request, the respondent misrepresented that there was already a pending case in the RTC of Makati before November 9, 2005;

4. refused to receive the complainant's Answer with Compulsory Counterclaim so that she could file on behalf of her client an Amended Complaint without leave of court and without presenting the Deed of Absolute Sale;

5. induced her witness Agnes Heredia (*Heredia*) to sign a false Affidavit by telling her that it would only be for purposes of compelling Fernandez to pay additional sums to her client; however, Atty. Villalon used it as evidence to frame the complainant Fernandez for her own personal gain;

6. only submitted the Deed of Donation for signature examination and certification by the NBI and intentionally failed to submit the Deed of Absolute Sale.[14]

The Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation. On January 30, 2008, Commissioner Dennis A.B. Funa (*Commissioner Funa*) issued a Report and Recommendation to dismiss the case, which in part reads:

There is no sufficient basis to hold respondent accountable for failure to mention in the Complaint and Amended Complaint the existence of the January 12 Deed of Absolute Sale. No such duty is imposed upon the legal counsel under any law or the Rules of Court. This Commissioner agrees with respondent's argument that only the client's operative facts and not the other evidentiary facts need to be included in the Complaint. It is correct for the respondent to argue that pointing out the existence of the January 12 Deed of Absolute Sale was a **matter of defense** which the defendant in said civil case can freely point out to the trial judge through his own pleadings.

[14] See generally, Petition for Review, pp. 6-7.

It cannot be argued that there was suppression of evidence on the part of the respondent as she is not the only person who had access or possession of the said Deed of Absolute Sale. It was a document readily available to the general public through the Notarial Office. Moreover, it was a document which was fully known to herein complainant as he was supposed to be a party to the said Deed of Absolute Sale. In other words, **a person cannot possibly suppress the existence of a document which everyone else, especially the opposing party-litigant, knows about.**

Furthermore, it is noted that while the letter to the Notarial Office was dated November 9, it was actually received by said office only on November 14, 2005. The civil Complaint was filed on November 15, or on the next day. We take note that **there is no indication when the Notarial Office formally replied to the respondent's letter inquiry.** Therefore, it cannot be said **with certainty** that respondent **acquired knowledge** about the Deed of Absolute Sale on November 14 or November 15.

We also take note that assuming the respondent had knowledge about (*sic*) the existence of the Deed of Absolute Sale before the civil complaint was filed, her role as the legal counsel is limited by the client's choice of cause of action. Moreover, its mere existence as a document is not an affirmation of its validity or due execution. In other words, the client, possibly believing in the invalidity of the Deed of Absolute Sale, may have chosen to refute the validity of the document at a later time when and if its existence is raised. This is a choice within the discretion of the party-litigant. The opposing party cannot impose it as a duty upon the other party or his legal counsel. There is, therefore, no sufficient factual basis to hold respondent accountable in this charge. As it turns out, respondent's client claims no consideration was ever given for the Deed of Absolute Sale and is consequently arguing that said Deed is void.

As for the accusation that respondent committed misrepresentation in her November 9 letter by stating that a case had already been filed when in truth no such case is yet pending, we take note that assuming a misrepresentation was committed, such act does not attain a degree of materiality or gravity so as to attribute evil malice on the part of respondent. The intent on the part of respondent remains the same, that is, to obtain relevant information. We cannot attribute any evil deception in the said letter considering the surrounding facts especially since a civil complaint was in fact filed the very next day the letter was sent.

As for the accusation that respondent refused or failed to receive registered mail matters, such has not been factually substantiated. The same goes with the accusation that respondents failed to furnish herein complainant's lawyer with a copy of the Amended Complaint.

PREMISES CONSIDERED, it is submitted that respondent did not commit any act for which she should be disciplined or administratively sanctioned.

It is therefore recommended that this CASE BE DISMISSED for lack of merit.[15]

Before this Court, Fernandez filed a Petition for Review raising the following issues:

1. whether Commissioner Funa committed grave abuse of discretion in recommending the dismissal of the disbarment case against the Respondent;
2. whether Commissioner Funa committed grave abuse of discretion in failing to resolve the matter regarding the affidavit of Heredia, in which she retracted her affidavit in Civil Case No. 05-1017 and further said that the respondent induced her to issue a false affidavit by telling her that the said affidavit would only be used to compel Fernandez to pay additional sums to Palacios.

THE COURT'S RULING

We agree with the recommendation of IBP Commissioner Funa. The charges against the respondent do not constitute sufficient grounds for disbarment.

A lawyer, as an officer of the court, has a duty to be truthful in all his dealings.[16] However, this duty does not require that the lawyer advance matters of defense on behalf of his or her client's opponent. A lawyer is his or her client's advocate; while duty-bound to utter no falsehood, an advocate is not obliged to build the case for his or her client's opponent.

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[15] *Rollo,* pp. 241-249.

[16] *Marcelo v. Javier,* A.C. No. 3248. September 18, 1992, 214 SCRA 1.

The respondent's former client, Palacios, approached her to file a complaint for the **annulment of the Deed of Donation**. This was the cause of action chosen by her client. Assuming *arguendo* that the respondent knew of the presence of the Deed of Absolute Sale, its existence, is, indeed, a matter of defense for Fernandez. We cannot fault the respondent for choosing not to pursue the nullification of the Deed of Absolute Sale. The respondent alleged that her former client, Palacios, informed her that the Deed of Absolute Sale was void for lack of consideration. Furthermore, unlike the Deed of Donation, the Deed of Absolute Sale was **not registered in the Registry of Deeds and was not the basis for the transfer of title of Palacios' property to Fernandez**. Under the circumstances, it was not unreasonable for a lawyer to conclude, whether correctly or incorrectly, that the Deed of Absolute Sale was immaterial in achieving the ultimate goal – the recovery of Palacios' property.

On the second issue, the petitioner complains that Commissioner Funa failed to consider Heredia's affidavit of retraction.[17] As a rule, we view retractions with caution; they can be bought and obtained through threats, intimidation, or monetary consideration.[18] The better rule is to examine them closely by considering the original, the new statements and the surrounding circumstances, based on the rules of evidence.[19]

The petitioner raised the retraction for the first time in his *Supplemental to* (*sic*) *Reply to Comment* filed with the Office of the Bar Confidant on November 10, 2006.[20] The petitioner attached Heredia's affidavit of December 11, 2005 and her affidavit of retraction.

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[17] *Rollo,* pp. 120-121.

[18] *People v. Navarro,* G.R. No. 129566, October 7, 1998, 297 SCRA 331.

[19] *Ibid.,* citing *People v. Peralta,* 237 SCRA 219 (1994)*; People v. Mindac,* 216 SCRA 558 (1992)*; People v. Clamor,* 198 SCRA 642 (1991).

[20] *Rollo,* pp. 117-119.

In her affidavit of December 11, 2005, Heredia attested that: 1) Palacios sought her help when a syndicate attempted to grab his land; 2) she referred Palacios to the group of Castro, Fernandez, and Jimenez who were then helping her with her own legal problems; 3) she regretted having referred Palacios to this group as she herself was later "victimized by the group; 4) they made her sign blank papers after gaining her trust and confidence, which signed blanks the group later filled up to make it appear that they bought and paid for her real property; 5) she terminated the services of this group sometime in April 2005; 6) she only recently came to know of this group's *modus operandi*; and 7) Palacios eventually became one of the group's victims.

In her affidavit of retraction, Heredia basically averred that the statements in the affidavit of December 11, 2005 were prepared by Villalon who asked her, in the presence of Palacios, to sign the affidavit; that the affidavit contained lies which she rejected outright, but Palacios and the respondent convinced her that they would only use the affidavit to convince Fernandez to give additional sums of money for Palacios' property; that Palacios admitted getting a motorcyle from Fernandez; that Palacios had been paid not less than ₱6,000,000.00 for his property; that the respondent and Palacios used her affidavit in the cases they filed against Fernandez; that this violated their agreement that the affidavit would only be used in their negotiations to get more money for the property; that Palacios admitted to her that he executed a Deed of Absolute Sale with Fernandez; that the execution of the Deed of Donation was his idea; that Palacios had Fernandez' signature in the Deed of Donation forged and was regretting having done so because Fernandez filed various charges, including perjury, against him; that she executed the affidavit of retraction in the interest of justice, to tell the truth about the circumstances surrounding the affidavit of December 11, 2005, to clear her name, to show that she is not part of the lies concocted by Atty. Villalon and Palacios, and to correct the wrong that was done by the affidavit of December 11, 2005 to the persons of Conrado Fernandez, Romeo Castro, and Atty. Augusto Jimenez, Jr.

In the Mandatory Conference and Hearing held on July 4, 2007, Commissioner Funa asked the respondent, through counsel, whether she wanted to cross-examine Heredia regarding her affidavit of retraction.[21] The respondent passed up the chance for a direct confrontation and opted to adopt her comment as her position paper. In the position paper she submitted on January 14, 2008, she attacked the credibility of Heredia's affidavit of retraction. She posited that Heredia contradicted herself when she said that she rejected the pre-prepared contents of the first affidavit outright but still signed it; that Heredia's claim that she had been hoodwinked into signing the first affidavit because she was assured that it was a mere scrap of paper, was unbelievable; and that Heredia failed to rebut her earlier statement that she regretted having referred Fernandez' group to Palacios because she herself fell victim to the group.

In disbarment proceedings, the burden of proof rests on the complainant.[22] Considering the gravity of the penalty of disbarment or suspension as a member of the Bar, a lawyer may only be disbarred or suspended if there is clear, convincing, and satisfactory proof that he or she committed transgressions defined by the rules as grounds to strip him or her of his professional license.[23]

In this case, we find no clear evidence we can satisfactorily accept showing that the respondent improperly induced Heredia to sign the affidavit of December 11, 2005, as alleged in Heredia's affidavit of retraction.

First, the original affidavit and the retraction stand uncorroborated by any other evidence and, in our view, stand on the same footing. Neither affidavit provides clear, convincing and satisfactory proof of what they allege. They cannot therefore

[21] *Rollo,* pp. 20-21.

[22] *Berbano v. Barcelona,* A.C. No. 6084, September 3, 2003, 410 SCRA 258.

[23] *Concepcion v. Fandiño, Jr.,* A.C. No. 3677, June 21, 2000, 334 SCRA 137.

stand as meritorious basis for an accusation against the respondent.

Second, the allegations in both sworn statements are so contradictory that we can only conclude that Heredia had grossly lied in either or even in both instruments. We find it incredible that Heredia, as stated in her affidavit of retraction, vehemently rejected the statements in the first affidavit, but nevertheless agreed to sign it because it would only be used to aid Palacios in his negotiations with Fernandez. Effectively, she admitted in her retraction that she had lied under oath and entered into a conspiracy to extract additional funds from Fernandez who would not have accepted the demand if they were falsely made. Why she did what she said she did is not at all clear from her retraction, which itself was not convincingly clear on why she was retracting. For this Court to accept a retraction that raises more questions than answers, made by a witness of doubtful credibility allegedly *for the sake of truth*, is beyond the limits of what this Court can accept.

In these lights, the retraction has no particular relevance so that the Commissioner's failure to consider it would matter.

WHEREFORE, the complaint for Disbarment is hereby ordered *DISMISSED*.

SO ORDERED.

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

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* Designated additional member of the Second Division per Special Order No. 571 dated February 12, 2009.

FIRST DIVISION

[A.M. No. RTJ-06-2027. February 27, 2009]

MARIETTA DUQUE, *complainant, vs.* **JUDGE CRISOSTOMO L. GARRIDO, Regional Trial Court, Branch 7, Tacloban City [presently assigned as Presiding Judge, Branch 13, Carigara, Leyte],** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LOWER COURT JUDGES MANDATED TO DECIDE A CASE WITHIN THE REGLEMENTARY PERIOD OF 90 DAYS.— Section 15 (1), Article VIII of the Constitution mandates lower court judges to decide a case within the reglementary period of 90 days, to wit: (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and **three months for all other lower courts**.

2. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; A JUDGE SHALL DECIDE CASES WITHIN THE REQUIRED PERIODS.— Likewise, the Code of Judicial Conduct under Rule 3.05 of Canon 3 dictates as follows: Rule 3.05— A judge shall dispose of the court's business promptly and decide cases within the required periods.

3. ID.; ID.; ID.; REQUEST FOR EXTENSION OF TIME TO DECIDE A CASE; CASE AT BAR.— Whenever a judge cannot decide a case promptly, all he has to do is to ask the Court for a reasonable extension of time to resolve it. In this case, granting that it was for a justifiable reason to render a decision or resolve a matter beyond the reglementary period, the respondent could have sought additional time by simply filing a request for extension. Respondent, however, did not avail of such relief.

4. ID.; ID.; ID.; SUBMISSION OF MEMORANDA NOT REQUIRED FOR PURPOSES OF DECIDING CASES.— Administrative

Circular No. 28 issued by this Court on July 3, 1989 regarding the submission of memoranda for purposes of deciding cases, clearly provides: x x x The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda; **in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum** or upon the expiration of the period to do so, whichever is earlier. A judge cannot even justify his delay in deciding a case on the excuse that he was still awaiting the parties' memoranda. In *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 55, Himamaylan City, Negros Occidental*, the Court held: x x x judges should decide cases even if the parties failed to submit memoranda within the given periods. Non-submission of memoranda is not a justification for failure to decide cases. **The filing of memoranda is not a part of the trial nor is the memorandum itself an essential, much less indispensable pleading before a case may be submitted for decision.** As it is merely intended to aid the court in the rendition of the decision in accordance with law and evidence — which even in its absence the court can do on the basis of the judge's personal notes and the records of the case — non-submission thereof has invariably been considered a waiver of the privilege.

5. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION; LESS SERIOUS CHARGE; IMPOSABLE PENALTY.— Under Section 9(1), Rule 140, as amended by A.M. No. 01-8-10-SC, of the Revised Rules of Court, undue delay in rendering a decision or order is categorized as a less serious charge. Under Section 11(B) of the same Rule, the penalty for such charge is suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

6. ID.; ID.; FRANKING PRIVILEGE; ONLY FOR OFFICIAL COMMUNICATION DIRECTLY CONNECTED WITH CONDUCT OF JUDICIAL PROCEEDINGS; CASE AT BAR.— We agree with the findings of the OCA that respondent must also be penalized for violation of P.D. No. 26 because he filed his Rejoinder to this administrative case taking advantage of the franking privilege. Although such privilege is extended to judges, the same refers only to official communications and papers directly connected with the conduct of judicial

proceedings which shall be transmitted in the mail free of charge. The respondent, in mailing his Rejoinder, made it appear that the same is an official court process as the envelope used bears his station and the words "FREE FROM POSTAGE". We concur with the OCA that respondent be admonished for such violation.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In a verified letter-complaint[1] dated February 7, 2006 complainant Marietta Duque charged respondent, Judge Crisostomo L. Garrido of the Regional Trial Court (RTC), Branch 7, Tacloban City, Leyte, with gross violation of Section 15, Article VIII of the 1987 Constitution for rendering a decision beyond ninety (90) days in Criminal Case No. 2000-10-580 entitled *People v. Reynaldo Caones y Royo Sr., et al.*

Complainant is the alleged common-law wife of the murdered victim in the aforementioned Criminal Case No. 2000-10-580. She claimed that the respondent Judge violated Section 15, Article VIII of the 1987 Constitution for rendering a decision beyond the 90 day reglementary period without requesting an extension of time from this Court. She alleged that the prosecution filed its Memorandum submitting the case for resolution on August 10, 2005, but the respondent issued a Decision on December 12, 2005 which was promulgated on January 27, 2006. Complainant further alleged that neither the offended party nor the handling prosecutor was notified of the promulgation.

In a 1st Indorsement[2] dated March 22, 2006, the Office of the Court Administrator (OCA) required respondent Judge to comment on the complaint within ten (10) days from receipt thereof.

In his Omnibus Comment[3] dated May 18, 2006, respondent judge denied the accusation that the decision in Criminal Case

[1] *Rollo*, p. 1.
[2] *Id.* at 38.
[3] *Id.* at 39-44.

No. 2000-10-580 was rendered beyond the 90-day period as prescribed by the 1987 Constitution.

He explained that while the last pleading — the Memorandum for the Prosecution — was filed on August 10, 2005, the Order declaring the case submitted for resolution was issued on September 13, 2005. Respondent further explained that the Decision dated December 12, 2005 was promulgated only on January 27, 2006 because he was on official leave from December 15, 2005 to January 15, 2006 as he left for the United States.

Respondent maintained that there was no impropriety or procedural infirmity in the promulgation of the decision even though the complainant and the handling prosecutor, Robert M. Visbal, were not present at that time. He reasoned that the complainant is not entitled to be notified of the promulgation as she is neither the private complainant nor a witness, while the prosecution was duly represented during the promulgation by Prosecutor Edgar A. Sabarre who was also assigned in the RTC. Respondent pointed out that the court had already set the schedule of the promulgation. Hence, when Prosecutor Visbal opted not to attend, it was for a reason only known to him.

Reacting to respondent's explanation regarding Prosecutor Visbal, the complainant attached to her Reply[4] an Affidavit[5] executed by said prosecutor wherein the latter averred that he was never informed of the date of the promulgation and that he was surprised to learn that respondent judge promulgated the decision in Criminal Case No. 2000-10-580 with Prosecutor Sabarre appearing in his behalf.

In his Rejoinder[6] respondent Judge claimed that his track record in deciding cases filed with the OCA bear out that no case of his had been decided beyond the 90-day reglementary

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[4] *Id.* at 141-142.

[5] *Id.* at 143-144.

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

period, as some were even decided within thirty (30) and sixty (60) days from the date the case was submitted for decision.

In a Report[7] dated September 6, 2006, the OCA found respondent judge administratively liable for rendering a decision beyond the 90-day period in violation of Section 15, Article VIII of the 1987 Constitution and Canon 3, Rule 3.05 of the Code of Judicial Conduct. Additionally, respondent was found to have violated the franking privilege under Presidential Decree (P.D.) No. 26. The OCA thus recommended:

1. That the instant administrative case be Re-docketed as a regular administrative matter.

2. That respondent Judge Crisostomo L. Garrido be found Guilty of Undue Delay In Rendering A Decision, in which case he should be meted with a penalty of Fine in the amount of Ten Thousand Pesos (₱10,000.00) with a Stern Warning that a similar infraction in the future shall be dealt with more severely.

3. That respondent Judge Crisostomo L. Garrido be Admonished for violating the franking privilege in filing his rejoinder to this administrative case.[8]

In the Resolution[9] dated October 9, 2006, the Court noted the letter-complaint, the comment of the respondent judge, the complainant's reply, respondent's rejoinder thereto and the report of the OCA.

Subsequently, by Resolution dated December 11, 2006[10], this Court required the parties to manifest, within ten (10) days from notice, their willingness to submit the case for resolution on the basis of the pleadings filed. In compliance thereto, both parties submitted their respective manifestations which the Court duly noted in the Resolution dated March 12, 2007.[11]

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[7] *Id.* at 154-157.

[8] *Id.* at 157.

[9] *Id.* at 158.

[10] *Id.* at 159.

[11] *Id.* at 163.

We agree with the findings and recommendation of the OCA.

Time and again, the Court has emphasized that the office of a judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties.

Section 15 (1), Article VIII of the Constitution mandates lower court judges to decide a case within the reglementary period of 90 days, to wit:

> (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and **three months for all other lower courts**. (Emphasis ours)

Likewise, the Code of Judicial Conduct under Rule 3.05 of Canon 3 dictates as follows:

> Rule 3.05 — A judge shall dispose of the court's business promptly and decide cases within the required periods.

Indeed, rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period within which to decide cases is mandatory.[12] The Court has consistently emphasized strict observance of this rule in order to minimize the twin problems of congestion and delay that have long plagued our courts.[13] Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case, for, not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute.[14]

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[12] *OCA v. Judge Lourdes M. Garcia-Blanco and Atty. Lolita R. Mercado*, A.M. No. RTJ-05-1941, April 25, 2006, 488 SCRA 109, 120.

[13] *Id*.

[14] *Id.* at 121.

As readily gleaned from the records, the last pleading submitted *i.e.*, the Memorandum for the Prosecution, was filed on August 10, 2005.[15] Thus, the case was deemed submitted for decision on that date. Accordingly, the decision should have been rendered not later than November 8, 2005. However, respondent issued it only on December 12, 2005 which was more than four months after the case had been submitted for decision.

Respondent Judge Garrido clearly violated both the Constitution and the Code of Judicial Conduct when he failed to decide Criminal Case No. 2000-10-580 within the 90-day period to decide cases prescribed for the lower courts.

Whenever a judge cannot decide a case promptly, all he has to do is to ask the Court for a reasonable extension of time to resolve it.[16] In this case, granting that it was for a justifiable reason to render a decision or resolve a matter beyond the reglementary period, the respondent could have sought additional time by simply filing a request for extension. Respondent, however, did not avail of such relief.

Respondent did not proffer any tenable justification for the delay in rendering the decision. He insisted that it was proper and procedural to first resolve the parties' memoranda before the case may be considered submitted for decision. He, thus, would want the Court to consider his Order[17] dated September 13, 2005 resolving the memoranda of the parties and declaring the case submitted for resolution as the starting point of the 90-day period for deciding the case and not on August 10, 2005, the date when the last pleading was filed.

Administrative Circular No. 28 issued by this Court on July 3, 1989 regarding the submission of memoranda for purposes of deciding cases, clearly provides:

x x x The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda;

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[15] *Rollo*, pp. 3-11.

[16] *Supra* at note 12, p. 121.

[17] *Rollo*, p. 416.

in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or upon the expiration of the period to do so, whichever is earlier. (Emphasis ours)

A judge cannot even justify his delay in deciding a case on the excuse that he was still awaiting the parties' memoranda. In *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 55, Himamaylan City, Negros Occidental*,[18] the Court held:

> x x x judges should decide cases even if the parties failed to submit memoranda within the given periods. Non-submission of memoranda is not a justification for failure to decide cases. **The filing of memoranda is not a part of the trial nor is the memorandum itself an essential, much less indispensable pleading before a case may be submitted for decision.** As it is merely intended to aid the court in the rendition of the decision in accordance with law and evidence — which even in its absence the court can do on the basis of the judge's personal notes and the records of the case — non-submission thereof has invariably been considered a waiver of the privilege. (Emphasis ours)

Failure of a judge, such as respondent herein, to decide a case within the prescribed period is inexcusable and constitutes gross inefficiency warranting a disciplinary sanction.[19]

Under Section 9(1),[20] Rule 140, as amended by A.M. No. 01-8-10-SC, of the Revised Rules of Court, undue delay in rendering a decision or order is categorized as a less serious

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[18] A.M. No. 05-4-213-RTC, March 6, 2006, 484 SCRA 99, 111.

[19] *Marites O. Tam v. Judge Jocelyn G. Regencia, MCTC, Asturias-Balamban, Cebu,* A.M. No. MTJ-05-1604, June 27, 2006, 493 SCRA 26, 42.

[20] Sec. 9. Less Serious Charges — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

2. Frequent and unjustified absences without leave or habitual tardiness;

charge. Under Section 11(B) [21] of the same Rule, the penalty for such charge is suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

In a case, we held the respondent judge administratively liable for gross inefficiency for delay in the disposition of cases and fined him ₱20,000.00 considering that he failed to act promptly and decide eight (8) cases within the time prescribed by law and it was not the first time that an administrative case was filed against said judge.[22]

In another, the respondent judge failed to decide three (3) cases and resolve eleven (11) motions within the reglementary period. Considering that it was the judge's first offense, the Court imposed a fine of ₱15,000.00.[23]

For failure of respondent judge in this case to decide Criminal Case No. 2000-10-580 within the prescribed period and taking into consideration the mitigating circumstance that it was his

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3. Unauthorized practice of law;

4. Violation of Supreme Court rules, directives and circulars;

5. Receiving additional or double compensation unless specifically authorized by law;

6. Untruthful statements in the certificate of service; and simple misconduct.

x x x x x x x x x

[21] Sec. 11. Sanctions.

x x x x x x x x x

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 but not exceeding ₱20,000;

x x x x x x x x x.

[22] Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 55, Himamaylan City, Negros Occidental, *supra* at note 18.

[23] *Supra* at note 12.

first offense, we impose on him a fine of Ten Thousand Pesos (₱10,000.00).

We agree with the findings of the OCA that respondent must also be penalized for violation of P.D. No. 26[24] because he filed his Rejoinder to this administrative case taking advantage of the franking privilege. Although such privilege is extended to judges, the same refers only to official communications and papers directly connected with the conduct of judicial proceedings which shall be transmitted in the mail free of charge. The respondent, in mailing his Rejoinder, made it appear that the same is an official court process as the envelope used bears his station and the words "FREE FROM POSTAGE." We concur with the OCA that respondent be admonished for such violation.

WHEREFORE, respondent Judge Crisostomo L. Garrido is hereby found *GUILTY* of *GROSS INEFFICIENCY* for delay in the disposition of a case and for which he is *FINED* Ten Thousand Pesos (₱10,000.00). He is likewise found GUILTY of violation of Presidential Decree No. 26 for which he is *ADMONISHED*. He is *STERNLY WARNED* that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of the decision be attached to his personal record.

SO ORDERED.

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

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[24] Entitled *Extending Franking Privilege To Papers Connected With Judicial Proceedings.*

[*] Additional Member as per Special Order No. 570.

SECOND DIVISION

[G.R. No. 167260. February 27, 2009]

The CITY OF ILOILO, Mr. ROMEO V. MANIKAN, in his capacity as the Treasurer of Iloilo City, *petitioners, vs.* **SMART COMMUNICATIONS, INC. (SMART),** *respondent.*

SYLLABUS

1. TAXATION; INTERNAL REVENUE CODE; TAX EXEMPTIONS; MUST BE CLEAR AND UNEQUIVOCAL.— The basic principle in the construction of laws granting tax exemptions has been very stable. As early as 1916, in the case of *Government of the Philippine Islands v. Monte de Piedad*, this Court has declared that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake. This doctrine was repeated in the 1926 case of *Asiatic Petroleum v. Llanes*, as well as in the case of *Borja v. Commissioner of Internal Revenue (CIR)* decided in 1961. Citing American jurisprudence, the Court stated in *E. Rodriguez, Inc. v. CIR*: The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law xxx When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported. In the recent case of *Digital Telecommunications, Inc. v. City Government of Batangas, et al.*, we adhered to the same principle when we said: A tax exemption cannot arise from vague 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.

2. ID.; ID.; ID.; SECTION 193 OF THE LOCAL GOVERNMENT CODE; ALL TAX EXEMPTION PRIVILEGES WITHDRAWN EFFECTIVE JANUARY 1, 1992, EXCEPT FOR THOSE EXPRESSLY MENTIONED.— We have indeed ruled that by virtue of Section 193 of the LGC, all tax exemption privileges then enjoyed by all persons, save those expressly mentioned, have been withdrawn effective January 1, 1992 – the date of effectivity of the LGC. The first clause of Section 137 of the LGC states the same rule. However, the withdrawal of exemptions, whether under Section 193 or 137 of the LGC, pertains only to those already existing when the LGC was enacted. The intention of the legislature was to remove all tax exemptions or incentives granted *prior* to the LGC.

3. ID.; ID.; ID.; FRANCHISE TAXES ON TELECOMMUNICATIONS COMPANIES ABOLISHED BY EXPANDED VALUE-ADDED TAX LAW.— Franchise taxes on telecommunications companies, however, have been abolished by R.A. No. 7716 or the Expanded Value-Added Tax Law (*E-VAT Law*), which was enacted by Congress on January 1, 1996. To replace the franchise tax, the E-VAT Law imposed a 10% value-added tax on telecommunications companies under Section 108 of the National Internal Revenue Code.

4. ID.; ID.; ID.; SECTION 23 OF THE PUBLIC TELECOMS ACT; EXEMPTION DOES NOT MEAN TAX EXEMPTION.— Whether Section 23 of the cited law extends tax exemptions granted by Congress to new franchise holders to existing ones has been answered in the negative in the case of *PLDT v. City of Davao*. The term "exemption" in Section 23 of the Public Telecoms Act does not mean tax exemption; rather, it refers to exemption from certain regulatory or reporting requirements imposed by government agencies such as the National Telecommunications Commission. The thrust of the Public Telecoms Act is to promote the gradual deregulation of entry, pricing, and operations of all public telecommunications entities, and thus to level the playing field in the telecommunications industry. The language of Section 23 and the proceedings of both Houses of Congress are bereft of anything that would signify the grant of tax exemptions to all telecommunications entities. Intent to grant tax exemption cannot therefore be discerned from the law; the term "exemption" is too general to include tax exemption and runs counter to the requirement that

the grant of tax exemption should be stated in clear and unequivocal language too plain to be beyond doubt or mistake.

5. ID.; ID.; INTERPRETATION OF TAX CODE; COMMISSIONER OF INTERNAL REVENUE GIVEN EXPRESS POWER TO INTERPRET TAX CODE.— However, in the 2001 case of *PLDT v. City of Davao*, we declared that we do not find BLGF's (Bureau of Local Government and Finance) interpretation of local tax laws to be authoritative and persuasive. The BLGF's function is merely to provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment, and other related matters. Unlike the Commissioner of Internal Revenue who has been given the express power to interpret the Tax Code and other national tax laws, no such power is given to the BLGF.

APPEARANCES OF COUNSEL

City Legal Officer (Iloilo) for petitioner.
Picazo Buyco Tan Fider & Santos for respondent.

D E C I S I O N

BRION, *J.*:

Before this Court is the appeal by *certiorari* filed by the City of Iloilo (*petitioner*) under Rule 45 of the Rules of Court seeking to set aside the decision of the Regional Trial Court (*RTC*) of Iloilo City, Branch 28, which declared that respondent SMART Communications, Inc. (*SMART*) is exempt from the payment of local franchise and business taxes.

BACKGROUND FACTS

The facts of the case are not in dispute. SMART received a letter of assessment dated February 12, 2002 from petitioner requiring it to pay deficiency local franchise and business taxes (in the amount of ₱764,545.29, plus interests and surcharges) which it incurred for the years 1997 to 2001. SMART protested the assessment by sending a letter dated February 15, 2002 to the City Treasurer. It claimed exemption from payment of local

franchise and business taxes based on Section 9 of its legislative franchise under Republic Act (*R.A.*) No. 7294 (*SMART's franchise*). Under SMART's franchise, it was required to pay a franchise tax equivalent to 3% of all gross receipts, which amount shall be in lieu of all taxes. SMART contends that the "in lieu of all taxes" clause covers local franchise and business taxes.

SMART similarly invoked R.A. No. 7925 or the Public Telecommunications Policy Act (*Public Telecoms Act*) whose Section 23 declares that any existing privilege, incentive, advantage, or exemption granted under existing franchises shall *ipso facto* become part of previously granted-telecommunications franchise. SMART contends that by virtue of Section 23, tax exemptions granted by the legislature to other holders of telecommunications franchise may be extended to and availed of by SMART.

Through a letter dated April 4, 2002, petitioner denied SMART's protest, citing the failure of SMART to comply with Section 252 of R.A. No. 7160 or the Local Government Code (*LGC*) before filing the protest against the assessment. Section 252 of the LGC requires payment of the tax before any protest against the tax assessment can be made.

SMART objected to the petitioner's denial of its protest by instituting a case against petitioner before the RTC of Iloilo City.[1] The trial court ruled in favour of SMART and declared the telecommunications firm exempt from the payment of local franchise and business taxes;[2] it agreed with SMART's claim of exemption under Section 9 of its franchise and Section 23 of the Public Telecoms Act.[3]

From this judgment, petitioner files this petition for review on *certiorari* raising the sole issue of whether SMART is exempt from the payment of local franchise and business taxes.

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[1] Civil Case No. 02-27144.

[2] Decision dated January 19, 2005, penned by Judge Loida J. Diestro-Maputol; *rollo*, pp. 35-39.

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

THE COURT'S RULING

SMART relies on two provisions of law to support its claim for tax exemption: Section 9 of SMART's franchise and Section 23 of the Public Telecoms Act. After a review of pertinent laws and jurisprudence – particularly of *SMART Communications, Inc. v. City of Davao*,[4] a case which, except for the respondent, involves the same set of facts and issues – we find SMART's claim for exemption to be unfounded. Consequently, we find the petition meritorious.

The basic principle in the construction of laws granting tax exemptions has been very stable. As early as 1916, in the case of *Government of the Philippine Islands v. Monte de Piedad*,[5] this Court has declared that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake. This doctrine was repeated in the 1926 case of *Asiatic Petroleum v. Llanes*,[6] as well as in the case of *Borja v. Commissioner of Internal Revenue (CIR)*[7] decided in 1961. Citing American jurisprudence, the Court stated in *E. Rodriguez, Inc. v. CIR*:[8]

> The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law xxx When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.

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[4] G.R. No. 155491, September 16, 2008.

[5] 35 Phil. 42 (1916).

[6] 49 Phil. 466 (1926).

[7] G.R. No. L-12134, November 30, 1961, 3 SCRA 591, citing *House v. Posadas*, 53 Phil. 338 (1929) and *CIR v. Manila Jockey Club, Inc.*, 98 Phil. 670 (1956).

[8] G.R. No. L-23041, July 31, 1969, 28 SCRA 1119, citing *Memphis v. U & P Bank*, 91 Tenn. 546, 550, and *Farrington v. Tennessee and County of Shelby*, 95 U.S. 679, 686.

In the recent case of *Digital Telecommunications, Inc. v. City Government of Batangas, et al.*,[9] we adhered to the same principle when we said:

A tax exemption cannot arise from vague 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.

The burden therefore is on SMART to prove that, based on its franchise and the Public Telecoms Act, it is entitled to exemption from the local franchise and business taxes being collected by the petitioner.

Claim for Exemption under SMART's franchise

Section 9 of SMART's franchise states:

Section 9. *Tax provisions*. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, **the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be *in lieu of all taxes* on this franchise or earnings thereof**: *Provided*, That the grantee, its successors or assigns shall continue to be liable for income taxes 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. [Emphasis supplied.]

The petitioner posits that SMART's claim for exemption under its franchise is not equivocal enough to prevail over the specific

[9] G.R. No. 156040, December 11, 2008.

grant of power to local government units to exact taxes from businesses operating within its territorial jurisdiction under Section 137 in relation to Section 151 of the LGC. More importantly, it claimed that exemptions from taxation have already been removed by Section 193 of the LGC:

> Section 193. *Withdrawal of Tax Exemption Privileges*. — Unless otherwise provided in this Code, **tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical,** including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA No. 6938, non-stock and non-profit hospitals and educational institutions, **are hereby withdrawn upon the effectivity of this Code.** [Emphasis supplied.]

The petitioner argues, too, that SMART's claim for exemption from taxes under Section 9 of its franchise is not couched in plain and unequivocal language such that it restored the withdrawal of tax exemptions under Section 193 above. It claims that "if Congress intended that the tax exemption privileges withdrawn by Section 193 of RA 7160 [LGC] were to be restored in respondent's [SMART's] franchise, it would have so expressly provided therein and not merely [restored the exemption] by the simple expedient of including the 'in lieu of all taxes' provision in said franchise."[10]

We have indeed ruled that by virtue of Section 193 of the LGC, all tax exemption privileges then enjoyed by all persons, save those expressly mentioned, have been withdrawn effective January 1, 1992 – the date of effectivity of the LGC.[11] The first clause of Section 137 of the LGC states the same rule.[12] However, the

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[10] *Rollo*, p. 20.

[11] *Philippine Long Distance Telephone Company, Inc. (PLDT) v. City of Bacolod, et al.*, G.R. No. 149179, July 15, 2005, 463 SCRA 528; *Mactan Cebu International Airport Authority v. Marcos*, G.R. No. 120082, September 11, 1986, 261 SCRA 667.

[12] Section 137. *Franchise Tax*. — **Notwithstanding any exemption granted by any law or other special law**, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized within its territorial jurisdiction. x x x. [Emphasis supplied.]

withdrawal of exemptions, whether under Section 193 or 137 of the LGC, pertains only to those already existing when the LGC was enacted. The intention of the legislature was to remove all tax exemptions or incentives granted *prior* to the LGC.[13] As SMART's franchise was made effective on March 27, 1992 – after the effectivity of the LGC – Section 193 will therefore not apply in this case.

But while Section 193 of the LGC will not affect the claimed tax exemption under SMART's franchise, we fail to find a categorical and encompassing grant of tax exemption to SMART covering exemption from *both* national and local taxes:

> R.A. No 7294 does not expressly provide what kind of taxes SMART is exempted from. It is not clear whether the "in lieu of all taxes" provision in the franchise of SMART would include exemption from local or national taxation. **What is clear is that SMART shall pay franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under its franchise. But whether the franchise tax exemption would include exemption from exactions by both the local and the national government is not unequivocal.**
>
> **The uncertainty in the "in lieu of all taxes" clause in R.A. No. 7294 on whether SMART is exempted from both local and national franchise tax must be construed strictly against SMART which claims the exemption.** [Emphasis supplied.][14]

Justice Carpio, in his Separate Opinion in *PLDT v. City of Davao*,[15] explains why:

> The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject to audit by the Bureau of Internal Revenue."

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[13] *SMART v. City of Davao, supra* note 4.

[14] *Id*.

[15] G.R. No. 143867, March 25, 2003, 399 SCRA 442.

Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes.

Nonetheless, even if Section 9 of SMART's franchise can be construed as covering local taxes as well, reliance thereon would now be unavailing. The "in lieu of all taxes" clause basically exempts SMART from paying all other kinds of taxes for as long as it pays the 3% franchise tax; it is the franchise tax that shall be in lieu of all taxes, and not any other form of tax.[16] Franchise taxes on telecommunications companies, however, have been abolished by R.A. No. 7716 or the Expanded Value-Added Tax Law (*E-VAT Law*), which was enacted by Congress on January 1, 1996.[17] To replace the franchise tax, the E-VAT Law imposed a 10%[18] value-added tax on telecommunications companies under Section 108 of the National Internal Revenue Code.[19] The "in lieu of all taxes" clause in the legislative franchise of SMART has thus become *functus officio*, made inoperative for lack of a franchise tax.[20]

SMART's claim for exemption from local business and franchise taxes based on Section 9 of its franchise is therefore unfounded.

Claim for Exemption Under Public Telecoms Act

SMART additionally invokes the "equality clause" under Section 23 of the Public Telecoms Act:

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[16] *Id*.

[17] Amended by R.A. No. 9337 or the Revised Value-Added Tax Law (*R-VAT Law*).

[18] The tax rate is now 12% per R-VAT Law.

[19] *Radio Communications of the Philippines, Inc. (RCPI) v. Provincial Assessor of South Cotabato, et al*., G.R. No. 144486, April 13, 2005, 456 SCRA 1.

[20] *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*, G.R. No. 152534, February 23, 2007, 516 SCRA 541.

SECTION 23. ***Equality of Treatment in the Telecommunications Industry.*** **— Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall** ***ipso facto*** **become part of previously granted telecommunications franchise and shall be accorded immediately and unconditionally to the grantees of such franchises**: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise. [Emphasis supplied.]

As in the case of *SMART v. City of Davao*,[21] SMART posits that since the franchise of telecommunications companies granted after the enactment of its franchise contained provisions exempting these companies from both national and local taxes, these privileges should extend to and benefit SMART, applying the "equality clause" above. The petitioner, on the other hand, believes that the claimed exemption under Section 23 of the Public Telecoms Act is similarly unfounded.

We agree with the petitioner.

Whether Section 23 of the cited law extends tax exemptions granted by Congress to new franchise holders to existing ones has been answered in the negative in the case of *PLDT v. City of Davao*.[22] The term "exemption" in Section 23 of the Public Telecoms Act does not mean tax exemption; rather, it refers to exemption from certain regulatory or reporting requirements imposed by government agencies such as the National Telecommunications Commission. The thrust of the Public Telecoms Act is to promote the gradual deregulation of entry, pricing, and operations of all public telecommunications entities, and thus to level the playing field in the telecommunications industry. The language of Section 23 and the proceedings of both Houses of Congress are bereft of anything that would signify the grant of tax exemptions to all telecommunications

[21] *Supra* note 15.

[22] G.R. No. 143867, August 22, 2001, 363 SCRA 522; see also note 15.

entities.[23] Intent to grant tax exemption cannot therefore be discerned from the law; the term "exemption" is too general to include tax exemption and runs counter to the requirement that the grant of tax exemption should be stated in clear and unequivocal language too plain to be beyond doubt or mistake.

Surcharge and Interests

Since SMART cannot validly claim any tax exemption based either on Section 9 of its franchise or Section 23 of the Public Telecoms Act, it follows that petitioner can impose and collect the local franchise and business taxes amounting to ₱764,545.29 it assessed against SMART. Aside from these, SMART should also be made to pay surcharge and interests on the taxes due.

The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest.[24] In refuting liability for the local franchise and business taxes, we do not believe SMART relied in good faith in the findings and conclusion of the Bureau of Local Government and Finance (*BLGF*).

In a letter dated August 13, 1998, the BLGF opined that SMART should be considered exempt from the franchise tax that the local government may impose under Section 137 of the LGC.[25] SMART, relying on the letter-opinion of the BLGF, invoked the same in the administrative protest it filed against petitioner on February 15, 2002, as well as in the petition for prohibition that it filed before the RTC of Iloilo on April 30, 2002. However, in the 2001 case of *PLDT v. City of Davao*,[26] we declared that we do not find BLGF's interpretation of local

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[23] *SMART v. City of Davao, supra* note 4.

[24] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, September 11, 2006, 501 SCRA 450, citing *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, 119 Phil. 40 (1963).

[25] *Rollo*, p. 48.

[26] *Supra* note 22; see also note 15.

tax laws to be authoritative and persuasive. The BLGF's function is merely to provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment, and other related matters.[27] Unlike the Commissioner of Internal Revenue who has been given the express power to interpret the Tax Code and other national tax laws,[28] no such power is given to the BLGF. SMART's dependence on BLGF's interpretation was thus misplaced.

WHEREFORE, we hereby *GRANT* the petition and *REVERSE* the decision of the RTC dated January 19, 2005 in Civil Case No. 02-27144 and find SMART liable to pay the local franchise and business taxes amounting to ₱764,545.29, assessed against it by petitioner, plus the surcharges and interest due thereon.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Nachura,*[*] *JJ.,* concur.

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[27] ADMINISTRATIVE CODE, Title II, Chapter 4, Section 33 (4).

[28] SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Cases.* — The power to interpret the provisions of this Code [NIRC] and other tax laws shall be under the exclusive and original jurisdictions of the Commissioner, subject to review by the Secretary of Finance. xxx.

[*] Designated additional member of the Second Division per Special Order No. 571 dated February 12, 2009.

SECOND DIVISION

[G.R. No. 172199. February 27, 2009]

ELIZABETH D. PALTENG, *petitioner, vs.* **UNITED COCONUT PLANTERS BANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; EMPLOYEE ILLEGALLY DISMISSED IS ENTITLED TO REINSTATEMENT AS WELL AS FULL BACKWAGES.— Settled is the rule that an employee who is illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. However, in the event that reinstatement is no longer possible, the employee may be given separation pay instead.

2. ID.; ID.; ID.; ID.; REINSTATEMENT AND PAYMENT OF BACKWAGES ARE DISTINCT AND SEPARATE RELIEFS.— Notably, reinstatement and payment of backwages are distinct and separate reliefs given to alleviate the economic setback brought about by the employee's dismissal. The award of one does not bar the other. Backwages may be awarded without reinstatement, and reinstatement may be ordered without awarding backwages.

3. ID.; ID.; ID.; BACKWAGES; NOT AWARDED AS PENALTY FOR MISCONDUCT OR INFRACTION COMMITTED BY THE EMPLOYEE.— In a number of cases, the Court, despite ordering reinstatement or payment of separation pay *in lieu* of reinstatement, has not awarded backwages as penalty for the misconduct or infraction committed by the employee.

APPEARANCES OF COUNSEL

Capuyan & Quimpo for petitioner.

Padilla Asuncion & Padilla Law Offices for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated December 23, 2005 and Resolution[2] dated April 4, 2006 of the Court of Appeals in CA-G.R. SP No. 72660 denying reconsideration. The appellate court had modified the Decision[3] dated March 6, 2002 of the National Labor Relations Commission (NLRC) and limited the award of backwages in favor of petitioner Elizabeth D. Palteng from the time she was illegally dismissed on October 25, 1996, until the promulgation of the Labor Arbiter's Decision[4] on December 6, 1999.

The antecedent facts are as follows:

Petitioner Elizabeth D. Palteng was the Senior Assistant Manager/Branch Operations Officer of respondent United Coconut Planters Bank in its Banaue Branch in Quezon City.

On April 15, 1996, Area Head and Vice-President Eulallo S. Rodriguez reported to the bank's Internal Audit and Credit Review Division that bank client Clariza L. Mercado —The Red Shop has incurred Past Due Domestic Bills Purchased (BP) of ₱34,260,000. After conducting a diligence audit, the division reported to the Audit and Examination Committee that Palteng committed several offenses under the Employee Discipline Code in connection with Mercado's Past Due Domestic BP. It also recommended that the matter be referred to the Committee on Employee Discipline for proper disposition.

On August 14, 1996, Palteng was required to explain why no disciplinary action should be taken against her in connection with the following alleged offenses:

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[1] *Rollo*, pp. 29-39. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Juan Q. Enriquez, Jr. and Sesinando E. Villon, concurring.

[2] *Id.* at 40.

[3] CA *rollo*, pp. 31-50.

[4] *Id.* at 78-97.

"1. Gross negligence and dereliction of duties in the implementation of company policies or valid orders from Management authorities, when:

a. You granted BP against personal checks. Per bank policy, checks eligible for BP accommodation are trade checks and granting of BP against personal checks is strictly prohibited.

b. You granted accommodations based on client's statement that a loan will be released. You failed to confirm this with AO Pearl Urbano before effecting the accommodations. You likewise failed to report to AO Urbano the excess availments on the OL of the client. Per bank policy on CSBD/CCD clients with established lines, the servicing unit/branches shall coordinate all BP/DAUD availments with the account officer for proper monitoring and control.

2. Abuse of discretion when:

a. You granted BP accommodations to the client in excess of the ₱5 million sublimit under her Omnibus Line. In spite of the fact that you did not have the approving authority, you did not elevate the client's availment to the proper authority for approval.

b. You approved the MCs issued to the client beyond your approving limit of ₱5 million being a Class C signatory. Issuance[s] were not confirmed by proper approving body."[5]

In response, Palteng explained that at the time the BP accommodation was extended, Mercado has, as far as she knew, an Omnibus Line of ₱100 Million secured by a pledge on jewelries. She was not aware that the Omnibus Line has been reduced to ₱50 Million and that it contained a ₱5 Million sublimit on BP. Nevertheless, she accepted full responsibility for granting the BP accommodation against Mercado's personal checks beyond and outside her authority. While she admitted committing a major offense that may cause her dismissal, she claimed that it was an honest mistake.[6]

[5] *Id.* at 67-68.

[6] *Id.* at 70-71.

After hearing and investigation, the committee recommended Palteng's dismissal. On October 25, 1996, Palteng was dismissed with forfeiture of all benefits.[7]

Palteng filed a complaint[8] for illegal dismissal seeking reinstatement to her former position without loss of seniority rights with full backwages, or in the alternative, payment of separation pay with full backwages, and recovery of her monetary claims with damages.

On December 6, 1999, the Labor Arbiter rendered a decision disposing, thus:

WHEREFORE, premises considered, judgment is hereby rendered declaring as illegal the termination of herein complainant and ordering respondent to pay complainant the following:

1.) Separation pay in lieu of reinstatement computed at the rate of one (1) month pay for every year of service from the time of her employment up to the time of termination.

2.) Full backwages plus increments or adjustment if any from the time of her dismissal until finality of judgment.

3.) ₱500,000.00 as moral damages.

4.) [₱300,000.00] as exemplary damages.

5.) 10% of the total monetary award as attorney's fees.

SO ORDERED.[9]

The bank appealed to the NLRC which rendered a decision on March 6, 2002, to wit:

WHEREFORE, premises considered[,] the assailed decision is hereby affirmed except that the awards of moral and exemplary damages are ordered deleted therefrom.

SO ORDERED.[10]

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[7] *Id.* at 80.

[8] Records, pp. 2-3.

[9] CA *rollo*, p. 97.

[10] *Id.* at 49.

Dissatisfied, the bank elevated the matter to the Court of Appeals. On December 23, 2005, the appellate court modified the decision of the NLRC, in this wise:

> WHEREFORE, premises considered, the petition is partially **GRANTED**. The decision of the labor arbiter dated December 6, 1999, as affirmed with modification by the National Labor Relations Commission, is further **MODIFIED** in that the award of backwages in favor of respondent Elizabeth D. Palteng shall correspond to the period from the date of her dismissal (on October 25, 1996) up to the promulgation of the labor arbiter's decision (on December 6, 1999).
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> SO ORDERED.[11]

The appellate court noted Palteng's admission that she granted BP accommodation to Mercado against her personal checks beyond and outside her authority and that said infraction is a major offense that may cause her dismissal. Hence, it limited the award of backwages from the time Palteng was illegally dismissed on October 25, 1996, until the promulgation of the Labor Arbiter's Decision on December 6, 1999, as penalty for her offense.

Petitioner now submits the following issue for our consideration:

> THE COURT OF APPEALS ERRED IN LIMITING THE AWARD OF BACKWAGES IN FAVOR OF PETITIONER, WHOSE DISMISSAL FROM EMPLOYMENT WAS DECLARED ILLEGAL BY THE COURT AND THE LABOR TRIBUNALS, TO ONLY UP TO THE DATE OF THE PROMULGATION OF THE LABOR ARBITER'S DECISION[.][12]

The crux of the present controversy is whether the award of backwages, if any, should be counted from the time petitioner was illegally dismissed until the promulgation of the Labor Arbiter's Decision on December 6, 1999, or until the finality of the decision.

Petitioner contends that the Labor Arbiter, the NLRC and the Court of Appeals unanimously found her dismissal illegal. Thus, she is entitled to the twin reliefs of reinstatement (or payment of separation pay if reinstatement is no longer possible) and

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[11] *Rollo*, p. 38.

[12] *Id.* at 19.

payment of backwages. She adds that the backwages should be computed from the time she was illegally dismissed on October 25, 1996, until the finality of the decision.

Respondent counters that petitioner is not entitled to the payment of backwages since she is not entirely faultless or fully innocent of the offenses imputed against her.

Settled is the rule that an employee who is illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[13] However, in the event that reinstatement is no longer possible, the employee may be given separation pay instead.[14]

Notably, reinstatement and payment of backwages are distinct and separate reliefs given to alleviate the economic setback brought about by the employee's dismissal. The award of one does not bar the other. Backwages may be awarded without reinstatement, and reinstatement may be ordered without awarding backwages.[15]

In a number of cases,[16] the Court, despite ordering reinstatement or payment of separation pay *in lieu* of reinstatement, has not

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[13] *Dusit Hotel Nikko v. Gatbonton*, G.R. No. 161654, May 5, 2006, 489 SCRA 671, 677; *Samarca v. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, 413 SCRA 162, 169; *Condo Suite Club Travel, Inc. v. NLRC*, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 691.

[14] *Bunagan v. Sentinel Watchman & Protective Agency, Inc.*, G.R. No. 144376, September 13, 2006, 501 SCRA 650, 658; *Urbanes, Jr. v. Court of Appeals*, G.R. No. 138379, November 25, 2004, 444 SCRA 84, 97.

[15] *De Guzman v. National Labor Relations Commission*, 371 Phil. 192 (1999); *Retuya v. Dumarpa*, G.R. No. 148848, August 5, 2003, 408 SCRA 315, 325; *St. Michael's Institute v. Santos*, G.R. No. 145280, December 4, 2001, 371 SCRA 383, 394-395.

[16] *Pepsi Cola v. National Labor Relations Commission*, G.R. No. 100686, August 15, 1995, 247 SCRA 386, *Yupangco Cotton Mills, Inc. v. NLRC*, G.R. No. 94156, July 30, 1990 (Unsigned Resolution), *Itogon-Suyoc*

awarded backwages as penalty for the misconduct or infraction committed by the employee.

In the case at bar, petitioner admitted that she granted the BP accommodation against Mercado's personal checks beyond and outside her authority. The Labor Arbiter, the NLRC and the Court of Appeals all found her to have committed an "error of judgment,"[17] "honest mistake,"[18] "honest mistake" *vis-à-vis* a "major offense."[19]

Since petitioner was not faultless in regard to the offenses imputed against her, we hold that the award of separation pay only, without backwages, is proper.

WHEREFORE, the Decision dated December 23, 2005 of the Court of Appeals in CA-G.R. SP No. 72660 is *AFFIRMED* **with the** *MODIFICATION* that the award of backwages is *DELETED*. Petitioner Elizabeth D. Palteng is hereby DECLARED entitled to be paid by respondent Bank only separation pay in lieu of reinstatement computed at the rate of one (1) month pay for every year of service from the time of her employment up to the time of her dismissal. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Nachura,[*] *Brion,* and *Peralta,*[**] *JJ.*, concur.

Mines, Inc. v. NLRC, No. 54280, September 30, 1982, 117 SCRA 523 cited in *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 202 (1999).

[17] CA *rollo*, p. 91.

[18] *Id.* at 49.

[19] *Rollo*, p. 36.

[*] Additional member in lieu of Associate Justice Dante O. Tinga who is on sabbatical leave.

[**] Additional member in lieu of Associate Presbitero J. Velasco, Jr. who is abroad on official business.

THIRD DIVISION

[G.R. No. 173976. February 27, 2009]

METROPOLITAN BANK AND TRUST COMPANY, INC., *petitioner, vs.* **EUGENIO PEÑAFIEL, for himself and as Attorney-in-Fact of ERLINDA PEÑAFIEL,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; MORTGAGE; EXTRAJUDICIAL FORECLOSURE; NOTICE REQUIREMENT.— Section 3, Act No. 3135, provides: SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, **such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city**.

2. ID.; ID.; ID.; ID.; PURPOSE.— The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation.

3. ID.; ID.; ID.; ID.; ID.; TO BE A NEWSPAPER OF GENERAL CIRCULATION, ELUCIDATED.—True, to be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information, that it has a *bona fide* subscription list of paying subscribers, and that it is published at regular intervals. Over and above all these, the newspaper must be available to the public in general, and not just to a select few chosen by the publisher. Otherwise, the precise objective of publishing the notice of sale in the newspaper will not be realized. In fact, to ensure a wide

readership of the newspaper, jurisprudence suggests that the newspaper must also be appealing to the public in general. The Court has, therefore, held in several cases that the newspaper must not be devoted solely to the interests, or published for the entertainment, of a particular class, profession, trade, calling, race, or religious denomination. The newspaper need not have the largest circulation so long as it is of general circulation.

4. REMEDIAL LAW; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; NON-COMPLIANCE WITH THE REQUISITE PUBLICATION; WHO HAS THE BURDEN OF PROOF.— It bears emphasis that, for the purpose of extrajudicial foreclosure of mortgage, the party alleging non-compliance with the requisite publication has the burden of proving the same.

APPEARANCES OF COUNSEL

Santiago Corpuz & Ejercito Law Offices for petitioner.
Salonga Hernandez & Mendoza for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dated July 29, 2005 and Resolution dated July 31, 2006. The assailed decision nullified the extrajudicial foreclosure sale of respondents' properties because the notice of sale was published in a newspaper not of general circulation in the place where the properties were located.

Respondent Erlinda Peñafiel and the late Romeo Peñafiel are the registered owners of two parcels of land covered by Transfer Certificate of Title (TCT) No. (350937) 6195 and TCT No. 0085, both issued by the Register of Deeds of Mandaluyong City. On August 1, 1991, the Peñafiel spouses mortgaged their properties in favor of petitioner Metropolitan

[1] Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Rebecca de Guia-Salvador and Fernanda Lampas Peralta, concurring; *rollo*, pp. 27-45.

Bank and Trust Company, Inc. The mortgage deed was amended on various dates as the amount of the loan covered by said deed was increased.

The spouses defaulted in the payment of their loan obligation. On July 14, 1999, petitioner instituted an extrajudicial foreclosure proceeding under Act No. 3135 through Diego A. Alleña, Jr., a notary public. Respondent Erlinda Peñafiel received the Notice of Sale, stating that the public auction was to be held on September 7, 1999 at ten o'clock in the morning, at the main entrance of the City Hall of Mandaluyong City. The Notice of Sale was published in *Maharlika Pilipinas* on August 5, 12 and 19, 1999, as attested to by its publisher in his Affidavit of Publication.[2] Copies of the said notice were also posted in three conspicuous places in Mandaluyong City.[3]

At the auction sale, petitioner emerged as the sole and highest bidder. The subject lots were sold to petitioner for ₱6,144,000.00. A certificate of sale[4] was subsequently issued in its favor.

On August 8, 2000, respondent Erlinda Peñafiel, through her attorney-in-fact, Eugenio Peñafiel, filed a Complaint[5] praying that the extrajudicial foreclosure of the properties be declared null and void. They likewise sought (a) to enjoin petitioner and the Register of Deeds from consolidating ownership, (b) to enjoin petitioner from taking possession of the properties, and (c) to be paid attorney's fees.

On June 30, 2003, the Regional Trial Court (RTC) rendered judgment in favor of petitioner:

> ACCORDINGLY, judgment is hereby rendered as follows:
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> 1. The extrajudicial foreclosure of real estate mortgage instituted by defendants Metrobank and Notary Public Diego A. Alleña,

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[2] *Rollo*, p. 100.

[3] *Id.* at 101.

[4] *Id.* at 72-73.

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

Jr. over the two parcels of land covered by TCT Nos. (350937) 6195 and TCT No. 0085 is hereby declared VALID; and

2. The counterclaim of herein defendants are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.[6]

Respondents appealed to the CA, raising, among others, the issue of whether petitioner complied with the publication requirement for an extrajudicial foreclosure sale under Act No. 3135.

On this issue, the CA agreed with respondents. The CA noted that the law requires that publication be made in a newspaper of general circulation in the municipality or city where the property is situated. Based on the testimony of the publisher of *Maharlika Pilipinas*, it concluded that petitioner did not comply with this requirement, since the newspaper was not circulated in Mandaluyong City where the subject properties were located. Thus, in its Decision dated July 29, 2005, the CA reversed the RTC Decision, thus:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE. A new one is hereby entered declaring the extrajudicial foreclosure sale of the properties covered by TCT Nos. (350937) 6195 and 0085 NULL and VOID.

SO ORDERED.[7]

Petitioner filed a motion for reconsideration[8] of the decision which the CA denied on July 31, 2006.

Petitioner now brings before us this petition for review on *certiorari*, raising the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED TO APPLY

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[6] *Id.* at 198.

[7] *Id.* at 44.

[8] *Id.* at 46-47.

THE PROVISIONS ON THE PUBLICATION OF JUDICIAL NOTICES UNDER SECTION 1 OF P.D. NO. 1079 TO THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE BY NOTARY PUBLIC OVER THE PROPERTIES COVERED BY TCT NO. (350927) 6195 AND TCT NO. 0085.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT "MAHARLIKA PILIPINAS" IS NOT A NEWSPAPER OF GENERAL CIRCULATION IN MANDALUYONG CITY.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED AND SET ASIDE THE DECISION DATED JUNE 30, 2003 ISSUED BY THE REGIONAL TRIAL COURT OF MANDALUYONG CITY, BRANCH 208 AND DECLARED THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTIES COVERED BY TCT NO. (350937) 6195 AND TCT NO. 0085 NULL AND VOID.[9]

This controversy boils down to one simple issue: whether or not petitioner complied with the publication requirement under Section 3, Act No. 3135, which provides:

SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, **such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city**.[10]

We hold in the negative.

Petitioner insists that *Maharlika Pilipinas* is a newspaper of general circulation since it is published for the dissemination of local news and general information, it has a *bona fide* subscription list of paying subscribers, and it is published at regular intervals. It asserts that the publisher's Affidavit of Publication attesting that *Maharlika Pilipinas* is a newspaper

[9] *Id.* at 326.

[10] Emphasis supplied.

of general circulation is sufficient evidence of such fact.[11] Further, the absence of subscribers in Mandaluyong City does not necessarily mean that *Maharlika Pilipinas* is not circulated therein; on the contrary, as testified to by its publisher, the said newspaper is in fact offered to persons other than its subscribers. Petitioner stresses that the publisher's statement that *Maharlika Pilipinas* is also circulated in Rizal and Cavite was in response to the question as to where else the newspaper was circulated; hence, such testimony does not conclusively show that it is not circulated in Mandaluyong City.[12]

Petitioner entreats the Court to consider the fact that, in an Order[13] dated April 27, 1998, the Executive Judge of the RTC of Mandaluyong City approved the application for accreditation of *Maharlika Pilipinas* as one of the newspapers authorized to participate in the raffle of judicial notices/orders effective March 2, 1998. Nonetheless, petitioner admits that this was raised for the first time only in its Motion for Reconsideration with the CA.[14]

The accreditation of *Maharlika Pilipinas* by the Presiding Judge of the RTC is not decisive of whether it is a newspaper of general circulation in Mandaluyong City. This Court is not bound to adopt the Presiding Judge's determination, in connection with the said accreditation, that *Maharlika Pilipinas* is a newspaper of general circulation. The court before which a case is pending is bound to make a resolution of the issues based on the evidence on record.

To prove that *Maharlika Pilipinas* was not a newspaper of general circulation in Mandaluyong City, respondents presented the following documents: (a) Certification[15] dated December 7, 2001 of Catherine de Leon Arce, Chief of the Business Permit

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[11] *Rollo*, pp. 329-331.

[12] *Id.* at 332-334.

[13] *Id.* at 265.

[14] *Id.* at 332.

[15] *Id.* at 149.

and Licensing Office of Mandaluyong City, attesting that *Maharlika Pilipinas* did not have a business permit in Mandaluyong City; and (b) List of Subscribers[16] of *Maharlika Pilipinas* showing that there were no subscribers from Mandaluyong City.

In addition, respondents also presented Mr. Raymundo Alvarez, publisher of *Maharlika Pilipinas*, as a witness. During direct examination, Mr. Alvarez testified as follows:

Atty. Mendoza:	And where is your principal place of business? Where you actually publish.
Witness:	At No. 80-A St. Mary Avenue, Provident Village, Marikina City.
Atty. Mendoza:	Do you have any other place where you actually publish Maharlika Pilipinas?
Witness:	At No. 37 Ermin Garcia Street, Cubao, Quezon City.
Atty. Mendoza:	And you have a mayor's permit to operate?
Witness:	Yes.
Atty. Mendoza:	From what city?
Witness:	Originally, it was from Quezon City, but we did not change anymore our permit.
Atty. Mendoza:	And for the year 1996, what city issued you a permit?
Witness:	Quezon City.
Atty. Mendoza:	What about this current year?
Witness:	Still from Quezon City.
Atty. Mendoza:	So , you have no mayor's permit from Marikina City?
Witness:	None, it's only our residence there.

[16] *Id.* at 150-161.

Atty. Mendoza:	What about for Mandaluyong City?
Witness:	We have no office in Mandaluyong City.
Atty. Mendoza:	Now, you said that you print and publish Maharlika Pilipinas in Marikina and Quezon City?
Witness:	Yes.
Atty. Mendoza:	Where else do you circulate your newspaper?
Witness:	In Rizal and in Cavite.
Atty. Mendoza:	In the subpoena[,] you were ordered to bring the list of subscribers.
Witness:	Yes.

xxx xxx xxx

Atty. Mendoza:	How do these subscribers listed here in this document became (sic) regular subscribers?
Witness:	They are friends of our friends and I offered them to become subscribers.
Atty. Mendoza:	Other than this list of subscribers, you have no other subscribers?
Witness:	No more.
Atty. Mendoza:	**Do you offer your newspaper to other persons other than the subscribers listed here?**
Witness:	**Yes, but we do not just offer it to anybody.**[17] (Emphasis supplied.)

It bears emphasis that, for the purpose of extrajudicial foreclosure of mortgage, the party alleging non-compliance with the requisite publication has the burden of proving the same.[18] Petitioner correctly points out that neither the publisher's statement that *Maharlika Pilipinas* is being circulated in Rizal and Cavite, nor his admission that there are no subscribers in

[17] *Id.* at 272-273.

[18] *Ruiz, et al. v. Sheriff of Manila, et al.,* 145 Phil. 111, 114 (1970).

Mandaluyong City proves that said newspaper is not circulated in Mandaluyong City.

Nonetheless, the publisher's testimony that they "do not just offer [*Maharlika Pilipinas*] to anybody" implies that the newspaper is not available to the public in general. This statement, taken in conjunction with the fact that there are no subscribers in Mandaluyong City, convinces us that *Maharlika Pilipinas* is, in fact, not a newspaper of general circulation in Mandaluyong City.

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property.[19] The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation.[20]

True, to be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information, that it has a *bona fide* subscription list of paying subscribers, and that it is published at regular intervals.[21] Over and above all these, the newspaper must be available to the public in general, and not just to a select few chosen by the publisher. Otherwise, the precise objective of publishing the notice of sale in the newspaper will not be realized.

In fact, to ensure a wide readership of the newspaper, jurisprudence suggests that the newspaper must also be appealing to the public in general. The Court has, therefore, held in several cases that the newspaper must not be devoted solely to the

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[19] *Olizon v. Court of Appeals,* G.R. No. 107075, September 1, 1994, 236 SCRA 148, 156.

[20] *Id.* at 155.

[21] *Perez v. Perez,* G.R. No. 143768, March 28, 2005, 454 SCRA 72, 81.

interests, or published for the entertainment, of a particular class, profession, trade, calling, race, or religious denomination. The newspaper need not have the largest circulation so long as it is of general circulation.[22]

Thus, the Court doubts that the publication of the notice of sale in *Maharlika Pilipinas* effectively caused widespread publicity of the foreclosure sale.

Noticeably, in the Affidavit of Publication, Mr. Alvarez attested that he was the "Publisher of *Maharlika Pilipinas*, a newspaper of general circulation, published every Thursday." Nowhere is it stated in the affidavit that *Maharlika Pilipinas* is in circulation in Mandaluyong City. To recall, Sec. 3 of Act No. 3135 does not only require that the newspaper must be of general circulation; it also requires that the newspaper be circulated in the municipality or city where the property is located. Indeed, in the cases[23] wherein the Court held that the affidavit of the publisher was sufficient proof of the required publication, the affidavit of the publisher therein distinctly stated that the newspaper was generally circulated in the place where the property was located.

Finally, petitioner argues that the CA, in effect, applied P.D. No. 1079[24] when it cited *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Company*,[25] which involved an extrajudicial foreclosure sale by a sheriff. Petitioner avers that the general reference to "judicial notices" in P.D. No. 1079, particularly Section 2[26] thereof, clearly shows that the law applies

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[22] *Id*.

[23] *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Co.*, 332 Phil. 844 (1996); *Bonnevie, et al. v. Court of Appeals, et al.*, 210 Phil. 100 (1983).

[24] Revising and Consolidating All Laws and Decrees Regulating Publication of Judicial Notices, Advertisements for Public Bidding, Notices of Auction Sales and Other Similar Notices.

[25] *Supra* note 23.

[26] Sec. 2 of P.D. No. 1079 provides:

only to extrajudicial foreclosure proceedings conducted by a sheriff, and not by a notary public.[27] P.D. No. 1079 allegedly applies only to notices and announcements that arise from court litigation.[28]

The Court does not agree with petitioner that the CA applied P.D. 1079 to the present case. The appellate court cited *Fortune Motors* merely to emphasize that what is important is that the newspaper is actually in general circulation in the place where the properties to be foreclosed are located.

In any case, petitioner's concern that the CA may have applied P.D. 1079 to the present case is trifling. While P.D. No. 1079 requires the newspaper to be "published, edited and circulated in the same city and/or province where the requirement of general circulation applies," the Court, in *Fortune Motors*, did not make a literal interpretation of the provision. Hence, it brushed aside the argument that *New Record*, the newspaper where the notice of sale was published, was not a newspaper of general circulation in Makati since it was not published and edited therein, thus:

> The application given by the trial court to the provisions of P.D. No. 1079 is, to our mind, too narrow and restricted and could not have been the intention of the said law. Were the interpretation of the trial court (sic) to be followed, even the leading dailies in the country like the "Manila Bulletin," the "Philippine Daily Inquirer," or "The Philippine Star" which all enjoy a wide circulation throughout

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SECTION 2. The executive judge of the Court of First Instance shall designate a regular working day and a definite time each week during which the said **judicial notices or advertisements** shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in the preceding section, which distribution shall be done by raffle: *Provided*, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: *Provided, further*, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city. (Emphasis supplied.)

[27] *Rollo,* pp. 327-328, 332-333.

[28] *Id.* at 331, 336.

the country, cannot publish legal notices that would be honored outside the place of their publication. But this is not the interpretation given by the courts. For what is important is that a paper should be in general circulation in the place where the properties to be foreclosed are located in order that publication may serve the purpose for which it was intended.[29]

Therefore, as it stands, there is no distinction as to the publication requirement in extrajudicial foreclosure sales conducted by a sheriff or a notary public. The key element in both cases is still general circulation of the newspaper in the place where the property is located.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated July 29, 2005 and Resolution dated July 31, 2006 in CA-G.R. CV No. 79862 are *AFFIRMED*.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Carpio Morales,*[***] and *Chico-Nazario (Acting Chairperson),*[****] *JJ.*, concur.

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[29] *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Co.*, *supra* note 23 at 850.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

[**] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 568 dated February 12, 2009.

[***] Additional member per Raffle dated September 24, 2007.

[****] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

EN BANC

[G.R. No. 174059. February 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANILO SIA *y* BINGHAY,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE VICTIM'S CATEGORICAL AND POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR.— Neither alibi nor denial can prevail over the victim's categorical and positive identification of the accused in the absence of any proof of ill-motive. Here, four-year-old AAA spontaneously and without hesitation identified appellant as the malefactor. Considering her tender years, she could not have invented a horrid tale but must have truthfully recounted a harrowing experience.

2. CRIMINAL LAW; PENALTIES; DEATH; COMMUTED TO *RECLUSION PERPETUA* BY RA No. 9346.— However, under RA No. 9346, the penalty of death has been commuted to *reclusion perpetua* without eligibility for parole.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

This is an appeal from the April 21, 2006 decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00135 affirming

[1] Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Romulo V. Borja and Ramon R. Garcia of the Special Twenty-Second Division of the Court of Appeals. Dated April 21, 2006. *Rollo,* pp. 2-22 and 141-159.

the June 29, 2000 decision[2] of the Regional Trial Court (RTC) of Lanao del Norte, Branch 2 which found Danilo Sia *y* Binghay guilty beyond reasonable doubt of statutory rape.[3]

On December 22, 1999, appellant was charged with statutory rape under the following Information:[4]

> That on or about December 20, 1999, in the City of Iligan, Philippines, within the jurisdiction of this Honorable Court, [appellant], by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], a 4-year-old minor, against the latter's will.
>
> Contrary to and in violation of Article 266-A, paragraph 1, Chapter 3 of the Revised Penal Code, as amended by [RA] 8353.

Upon arraignment, appellant pleaded not guilty.

During trial, the prosecution essentially established that, in the afternoon of December 20, 1999, the four-year-old victim AAA and appellant were seen entering a banana plantation in Purok Sta. Lucia, Mahayahay, Iligan City. Several minutes later, the child came out of the plantation alone, half-naked, tearstained and bloodied. She was immediately brought to the Don Gregorio Lluch Medical Center where she was examined by Dr. Luisa Lualhati Serate and given medical treatment by Dr. Margarita Angela Botilao.

According to Dr. Serate, the victim was sobbing when she arrived at the hospital but cried harder during the examination. Dr. Serate found that AAA's vagina and perineum were severely lacerated and bleeding. She opined that the said injuries probably resulted from sexual abuse. To stop the hemorrhage, Dr. Botilao subsequently performed reconstructive surgery.

When asked who "hurt" her, AAA immediately answered "Tito Danny," referring to the appellant who was a neighbor and close friend of their family.

Appellant, on the other hand, asserted that he could not have sexually abused AAA inasmuch as he was in the vicinity of

[2] Penned by Judge Maximo Ratunil. *Id.*, pp. 15-26.

[3] See REVISED PENAL CODE, Section 266-A(1)(d).

[4] Docketed as Criminal Case No. II-7991.

the Iligan Capitol College en route to Iligan City proper when the offense was committed.

The RTC found that AAA positively identified appellant as the one who sexually abused her. Weighing the evidence of the prosecution against that of the defense, the trial court found appellant guilty beyond reasonable doubt of statutory rape and consequently sentenced him to death. The RTC likewise ordered appellant to pay AAA ₱75,000 as civil indemnity *ex delicto* and ₱50,000 as moral damages.[5]

On appellate review, the CA affirmed the findings and ruling of the RTC with modification as to the amount of the damages. In addition to civil indemnity *ex delicto* and moral damages, appellant was ordered to pay AAA ₱25,000 as exemplary damages which are awarded in cases of statutory rape to deter individuals with perverse tendencies from sexually abusing young children.[6]

We modify the decision of the CA.

Neither alibi nor denial can prevail over the victim's categorical and positive identification of the accused in the absence of any proof of ill-motive.[7] Here, four-year-old AAA spontaneously and without hesitation identified appellant as the malefactor. Considering her tender years, she could not have invented a horrid tale but must have truthfully recounted a harrowing experience. We therefore find no reason to disturb the factual findings of the RTC as affirmed by the CA.

However, under RA 9346, the penalty of death has been commuted to *reclusion perpetua* without eligibility for parole.[8] Moreover, in line with recent jurisprudence, the awards of moral

[5] *Supra* note 2.

[6] *Supra* note 1.

[7] *People v. Rentoria,* G.R. No. 175333, 21 September 2007, 533 SCRA 708, 734-735.

[8] *People v. Pioquinto,* G.R. No. 168326, 11 April 2007, 520 SCRA 712, 724.

and exemplary damages are increased to ₱75,000 and ₱30,000, respectively.[9]

WHEREFORE, the April 21, 2006 decision of the Court of Appeals in CA-G.R. CR HC No. 00135 is hereby *AFFIRMED WITH MODIFICATION*. Appellant Danilo Sia *y* Binghay is hereby found guilty beyond reasonable doubt of statutory rape as defined and penalized in Article 266-A(1)(d) of the Revised Penal Code and is sentenced to *reclusion perpetua* without eligibility for parole. He is further ordered to pay AAA ₱75,000 as civil indemnity *ex delicto,* ₱75,000 as moral damages and ₱30,000 as exemplary damages.

Costs against appellant.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

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

Ynares-Santiago, J., on official leave.

Tinga, J., on leave.

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[9] *People v. Abellera,* G.R. No. 166617, 3 July 2007, 526 SCRA 329, 343.

THIRD DIVISION

[G.R. No. 177583. February 27, 2009]

LOURDES BALTAZAR and EDISON BALTAZAR, *petitioners, vs.* **JAIME CHUA *y* IBARRA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ONCE INFORMATION IS FILED IN COURT, ANY DISPOSITION RESTS ON THE SOUND DISCRETION OF THE COURT.— Once an information is filed in court, any disposition of the case, be it dismissal, conviction, or acquittal of the accused, rests on the sound discretion of the court. *Crespo v. Mogul* laid down this basic precept in this wise: The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same.

2. ID.; ID.; ID.; INCLUDED IN THE DISPOSITION IS EXCLUSION OF AN ACCUSED.— Considering that the trial court has the power and duty to look into the propriety of the prosecution's motion to dismiss, with much more reason is it for the trial court to evaluate and to make its own appreciation and conclusion, whether the modification of the charges and the dropping of one of the accused in the information, as recommended by the Justice Secretary, is substantiated by evidence. This should be the state of affairs, since the disposition of the case — such as its continuation or dismissal or exclusion of an accused — is reposed in the sound discretion of the trial court.

3. ID.; ID.; ID.; ID.; EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION; DEFINED.— There is excess of jurisdiction

where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law. And there is grave abuse of discretion where the capricious, whimsical, arbitrary or despotic manner in which the court, tribunal, board or officer exercises its/his judgment is said to be equivalent to lack of jurisdiction.

4. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— Judge Hidalgo is far from being abusive in rendering his questioned Order. He was merely following the injunctions of this Court that whenever a court is presented with a motion to dismiss or to withdraw an information or to exclude an accused from the charge (as heretofore discussed) upon the behest of the Secretary of Justice, the trial court has to determine the merits of the same, and not be subservient to the former. The Court of Appeals insisted that the instant case did not involve a disposal that would call for the trial court's power to grant or deny the same. This is inaccurate. Lourdes and Edison's *Motion for the Amendment of the Informations for Homicide and Frustrated Homicide*, filed on 30 April 1998, was questioning the dismissal of the cases against Jaime and the downgrading of the charges against Jovito. The exclusion of Jaime from the charges was not only disposing the cases against him, but also letting him free from any criminal liabilities arising from the death of Ildefonso Baltazar and the wounding of Edison.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Offices for petitioners.

Kintanar Jamon Paruñgao & Ladia Law Firm for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] of the Court of Appeals

[1] Penned by Associate Mariano C. del Castillo with Associate Justices Ruben T. Reyes and Arcangelita Romilla Lontok, concurring; *rollo*, pp. 54-70.

in CA-G.R. SP No. 92671, which annulled the 7 December 2004 Order[2] of the Regional Trial Court (RTC) of Manila, Branch 37, directing the filing of Informations for Murder and Frustrated Murder against Jaime Chua (Jaime) and Jovito Armas, Jr. (Jovito).

Jaime and Jovito were charged before the RTC Manila, Branch 27 with the crimes of homicide and frustrated homicide for the death of Ildefonso Baltazar and the wounding of Edison Baltazar. The cases, which were docketed as Criminal Cases No. 97-154966 and No. 97-154967, were presided by Judge Edgardo P. Cruz (Judge Cruz).[3]

On 13 February 1997, petitioners Lourdes Baltazar (Lourdes) and Edison Baltazar (Edison), through counsel, filed a motion for reinvestigation of the cases, praying that Jaime and Jovito be charged with the crimes of murder and frustrated murder, instead of homicide and frustrated homicide.

In a Resolution dated 2 July 1997, the City Prosecutor's Office, upon reinvestigation, found that the appropriate charges against Jaime and Jovito were murder and frustrated murder. With this, the City Prosecutor filed a motion for admission of amended Informations for Murder and Frustrated Murder, which was granted by Judge Cruz in an Order dated 9 September 1997.

Jaime and Jovito appealed the 2 July 1997 Resolution of the City Prosecutor to the Department of Justice (DOJ).

The Secretary of the DOJ (Secretary of Justice), in his Resolution dated 20 October 1997, modified the 2 July 1997 resolution of the City Prosecutor by directing the latter to amend the Informations for Murder and Frustrated Murder to Homicide and Frustrated Homicide against Jovito and to drop Jaime from the charges. On 13 November 1997, Lourdes and Edison filed a motion for reconsideration of the 20 October 1997 Resolution of the Secretary of Justice, which was denied by the latter on 15 December 1997.

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[2] Penned by Judge Vicente A. Hidalgo; *id.* at 184-190.

[3] Now an Associate Justice of the Court of Appeals.

Meanwhile, on 11 November 1997, in obedience to the directive of the Secretary of the DOJ, the City Prosecutor filed with the RTC a *Manifestation and Motion for the Withdrawal of the Informations for Murder and Frustrated Murder and for the Admission of New Informations for Homicide and Frustrated Homicide*.

Over the objections of Lourdes and Edison, Judge Cruz granted the said manifestation and motion in an Order dated 18 November 1997, thereby leaving Jovito as the lone accused. The Order partly provides:

> Having been presented prior to arraignment, the motion for withdrawal of the information for murder and frustrated murder is granted pursuant to Sec. 14, Rule 110 of the Revised Rules of Court. Consequently, the amended information for murder and frustrated murder in Crim. Cases Nos. 97-154966 and 97-154967, respectively, are considered withdrawn.[4]

Unconvinced of the correctness of the dismissal of the charges against Jaime and the downgrading of the charges against Jovito, Lourdes and Edison moved for a reconsideration. They asked the RTC to maintain the informations for murder and frustrated murder against Jovito and Jaime and asked the RTC to determine the existence of probable cause for these charges, pursuant to the ruling in *Crespo v. Mogul*,[5] which ruled that *once an information is filed in court, the disposition of said case lies in the discretion of the trial court.*

In the meantime, the cases were re-raffled to Branch 37 of the Manila RTC presided over by Judge Vicente A. Hidalgo (Judge Hidalgo) and docketed as Criminal Cases No. 97-161168 and No. 97-161169.

Despite the transfer of the cases to the *sala* of Judge Hidalgo, Judge Cruz, nonetheless, acted on Lourdes and Edison's motion for reconsideration of the Order dated 18 November 1997. In his order dated 16 February 1998, Judge Cruz denied the said

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[4] CA *rollo*, p. 38.

[5] G.R. No. 53373, 30 June 1987, 151 SCRA 462, 469-470.

motion on the ground that the proper motion to amend the informations for homicide and frustrated homicide to murder and frustrated murder should be filed before Branch 37, presided by Judge Hidalgo, where said cases were transferred; and that the amendment of informations was a matter of right of the prosecution before arraignment, thus:

> [T]he Court is in no position to favorably act on the instant motion. If, indeed, there is probable cause for indicting both accused for the crimes of murder and frustrated murder, **the appropriate motion (*e.g.* amendment of the information) should be filed in Criminal Cases Nos. 97-161168 and 97-161169 and not in these cases**. To rule otherwise would sanction multiple charges (murder and homicide; and frustrated murder and frustrated homicide) for a single offense, thereby places accused in double jeopardy x x x.[6] (Emphasis supplied.)

On 4 March 1998, Lourdes and Edison filed before Judge Cruz a *Motion to Maintain the Amended Informations for Murder and Frustrated Murder*. This motion mainly reiterates Lourdes and Edison's objection to the dismissal of the charges against Jaime and the downgrading of the charges against Jovito.

On 1 April 1998, Judge Cruz denied the foregoing motion on the ground that the same was, in effect, a second motion for reconsideration of the Order dated 18 November 1997, and that to act on the said motion would interfere with the prerogative of Judge Hidalgo of RTC Branch 37, where the cases were transferred. The 1 April 1998 Order partly reads:

> [T]his branch cannot act on the motion to dismiss or consider withdrawn the informations for homicide and frustrated homicide, otherwise, it would be interfering with the prerogatives of the other branch of this Court where those criminal actions are pending.[7]

On 30 April 1998, Lourdes and Edison filed this time before Judge Hidalgo a *Motion for the Amendment of the Informations for Homicide and Frustrated Homicide*, which actually contained arguments identical with those in the *Motion to*

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[6] CA *rollo*, pp. 42-43.

[7] *Rollo*, pp. 166-167.

Maintain the Amended Informations for Murder and Frustrated Murder filed by them on 4 March 1998; *i.e.*, that the RTC should assert its authority over said cases, independently of the opinion of the Secretary of Justice, and make its own assessment whether there is sufficient evidence to hold both Jaime and Jovito liable for the crime of murder and frustrated murder.

In an Order dated 7 December 2004, Judge Hidalgo, after making his own assessment of the documents presented by both the prosecution and the defense, granted the motion and ordered the reinstatement of the informations for murder and frustrated murder. The decretal portion of the Order reads:

> WHEREFORE, in view of the foregoing, the Informations for Homicide and Frustrated Homicide are considered withdrawn and the Court hereby orders the reinstatement of the Informations for murder and frustrated murder x x x.[8]

On 26 April 2005, Jaime and Jovito filed a motion for reconsideration. They argued that the RTC had no authority to make its own independent findings of facts to determine probable cause against them, apart from the findings made by the Secretary of Justice. Judge Hidalgo denied the said motion, opining that the RTC had the power and duty to make an evaluation to determine the existence of probable cause for the charges, independent of the opinion of the Secretary of Justice. The dispositive part of the Order provides:

> Accordingly, the Motion for Reconsideration filed by the accused is hereby DENIED for lack of basis x x x. Asst. City Prosecutor Ronaldo Hubilla is hereby directed within 10 days from receipt hereof to file amended Informations for Murder and Frustrated Murder against Jovito Armas, Jr. and Jaime Chua, respectively.[9]

Jaime then filed a petition for *certiorari* and prohibition with the Court of Appeals. Again, Jaime contended that Judge Hidalgo

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[8] CA *rollo*, p. 28.

[9] *Id.* at 31.

had no authority to order the amendment of the informations and to include him as co-accused, since such powers and prerogatives revolved exclusively on the Department of Justice and the City Prosecutor.

In a Decision dated 24 January 2007, the Court of Appeals granted Jaime's petition and nullified the 7 December 2004 Order of Judge Hidalgo, ruling that the same were issued in grave abuse of discretion amounting to excess of jurisdiction. In nullifying Judge Hidalgo's Order, the Court of Appeals held that *Crespo* was not applicable to the instant case, since Judge Hidalgo, unlike in the *Crespo* case, was not confronted with a motion to dismiss or tasked to convict or to acquit an accused. It maintained that the trial court could only exercise its sound discretion on what to do with cases filed before it in line with *Crespo*, when there was a pleading calling for the dismissal, conviction or acquittal of the accused. Since Lourdes and Edison's *Motion for the Amendment of the Informations for Homicide and Frustrated Homicide* filed on 30 April 1998 was not a motion to dismiss nor one aimed at convicting or acquitting the accused, then *Crespo* found no relevance.

The Court of Appeals likewise stressed that the 7 December 2004 Order of Judge Hidalgo was a patent nullity since it revived the earlier 18 November 1997 Order of Judge Cruz withdrawing the charges against Jaime, which had already attained finality on 6 October 1998.

Aggrieved, Lourdes and Edison filed the instant petition.

We grant the petition.

The basic issue at hand is whether Judge Hidalgo may review the finding of the Secretary of Justice on the existence or non-existence of probable cause sufficient to hold Jaime for trial and substitute his judgment for that of the Secretary of Justice.

The rule is that once an information is filed in court, any disposition of the case, be it dismissal, conviction, or acquittal

of the accused, rests on the sound discretion of the court. *Crespo v. Mogul*[10] laid down this basic precept in this wise:

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same.

In observance of the tenet spelled out in *Crespo*, the Court in *Martinez v. Court of Appeals*[11] lamented the trial court's grant of the motion to dismiss filed by the prosecution, upon the recommendation of the Secretary of Justice, as the judge merely relied on the conclusion of the prosecution, thereby failing to perform his function of making an independent evaluation or assessment of the merits of the case.

Crespo and *Martinez* mandated the trial courts to make an independent assessment of the merits of the recommendation of the prosecution dismissing or continuing a case. This evaluation may be based on the affidavits and counter-affidavits, documents, or evidence appended to the information; the records of the public prosecutor which the court may order the latter to produce before the court; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.[12] Reliance on the resolution of the Secretary of Justice alone is considered an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case. While the ruling of the Justice Secretary is persuasive, it is not binding

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[10] *Supra* note 5 at 471.

[11] G.R. No. 112387, 13 October 1994, 237 SCRA 575.

[12] *Santos v. Orda, Jr.*, G.R. No. 158236, 1 September 2004, 437 SCRA 504, 515.

on courts.[13] The trial court is not bound by the Resolution of the Justice Secretary, but must evaluate it before proceeding with the trial.

Considering that the trial court has the power and duty to look into the propriety of the prosecution's motion to dismiss, with much more reason is it for the trial court to evaluate and to make its own appreciation and conclusion, whether the modification of the charges and the dropping of one of the accused in the information, as recommended by the Justice Secretary, is substantiated by evidence. This should be the state of affairs, since the disposition of the case — such as its continuation or dismissal or exclusion of an accused — is reposed in the sound discretion of the trial court.[14]

In the case under consideration, the City Prosecutor indicted Jaime and Jovito for the crimes of murder and frustrated murder. However, upon review, the Secretary of Justice downgraded the charges to homicide and frustrated homicide. The Secretary also dropped Jaime from the charges. This resolution prompted the City Prosecutor to file a *Manifestation and Motion for the Withdrawal of the Informations for Murder and Frustrated Murder and for the Admission of New Informations for Homicide and Frustrated Homicide* against Jovito only, which was granted by Judge Cruz in his Order dated 18 November 1997. Judge Cruz, however, failed to make an independent assessment of the merits of the cases and the evidence on record or in the possession of the public prosecutor. In granting the motion of the public prosecutor to withdraw the Informations, the trial court never made any assessment whether the conclusions arrived at by the Secretary of Justice was supported by evidence. It did not even take a look at the bases on which the Justice Secretary downgraded the charges against Jovito and excluded Jaime therefrom. The said order reads:

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[13] *Chan v. Secretary of Justice*, G.R. No. 147065, 14 March 2008, 548 SCRA 337, 349.

[14] *Ledesma v. Court of Appeals*, G.R. No. 113216, 5 September 1997, 278 SCRA 656, 682.

For resolution is the prosecution's motion to withdraw the amended information for murder and frustrated murder and to admit, in lieu thereof, the information for homicide and frustrated homicide. (Manifestation and Motion dated November 6, 1997). The motion was filed in compliance with the resolution of the Secretary of Justice dated October 20, 1997 directing the City Prosecutor "to amend the information from murder and frustrated murder to homicide and frustrated homicide against Jovito Armas, Jr. and to drop Jaime Chua from the charges.

Having been presented prior to arraignment, the motion for withdrawal of the information for murder and frustrated murder is granted pursuant to Sec. 14, Rule 110 of the Revised Rules of Court. Consequently, the amended information for murder and frustrated murder in Crim. Cases Nos. 97-154966 and 97-154967, respectively are considered withdrawn.[15]

In so doing, the trial court relinquished its judicial power in contravention to the pronouncement of the Court in *Crespo* and in *Martinez*.

Judge Cruz did not have a chance to correct his error since, during the pendency of the motion for reconsideration questioning his order dated 18 November 1997, the cases were subsequently transferred to another branch which was presided by Judge Hidalgo. Thus, in his supposed order resolving the said motion for reconsideration, Judge Cruz merely recommended to the movants to go to Judge Hidalgo, who now had jurisdiction over the cases, and to question therein whether the downgrading of the crimes charged against Jovito and the exclusion of Jaime therefrom were proper. Judge Cruz ruled in this wise:

[T]he Court is in no position to favorably act on the instant motion. If, indeed, there is probable cause for indicting both accused for the crimes of murder and frustrated murder, **the appropriate motion (*e.g.* amendment of the information) should be filed in Criminal Cases Nos. 97-161168 and 97-161169 and not in these cases**. To rule otherwise would sanction multiple charges (murder and homicide; and frustrated murder and frustrated homicide) for a single offense,

[15] CA *rollo*, p. 38.

thereby placing accused in double jeopardy x x x.[16] (Emphasis supplied.)

Heeding the advice of Judge Cruz, Lourdes and Edison, went to Judge Hidalgo where they questioned anew the downgrading by the Justice Secretary of the charges against Jovito and the exclusion of Jaime from the charges. After a thorough evaluation of the evidence available *vis-a-vis* the Resolution of the Justice Secretary, Judge Hidalgo disagreed with those findings. He found that the proper charges against Jovito were murder and frustrated murder and not homicide and frustrated homicide. He, likewise, believed that Jaime was involved in these crimes. The discussion of Judge Hidalgo's Order dated 7 December 2004 is as follows:

In the affidavit executed by the private complainant Lourdes Baltazar, she positively identified Jaime Chua, who was just outside the door of the subject apartment, as the one who handed the gun to Jovito Armas, Jr. simultaneously directing the latter to fire the same to the deceased by telling "*iyan tirahin mo*." This was confirmed by Edison Baltazar, the son of the deceased, who has a more vivid recollection of the incident, he being present in the scene when the incident occurred and more so, a victim too, who was mortally wounded in the crime complained of. He declared that his father was shot while both his hands were already raised as a manifestation that he has (sic) no intention to fight Jaime Chua and Jovito Armas, Jr. Ildefonso turned his back to back off and leave the aggressors but despite thereof Jovito Armas, Jr. proceeded to carry out the commands of his boss Jaime Chua, resulting in the death of helpless Ildefonso Baltazar.

When his father fell on the ground, he saw Jovito Armas who was about to shoot again his father. So, he surged to his father and covered the latter with his own body as a shield causing him to be shot in the process.

The summary of evidence demonstrates that there is a *prima facie* facts showing the presence of the element of treachery in the case at bar. The circumstance shows that the shooting was sudden and unexpected to the deceased constituting the element of alevosia

[16] *Id.* at 42-43.

necessary to raise homicide to murder, it appearing that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. This is evident since Jovito Armas, Jr. could have fired the gun to the anterior body of Ildefonso Baltazar while the latter was still facing him. But to insure the commission of the killing or to make it impossible or difficult for Ildefonso to retaliate or defend himself, Jovito did the shooting when Ildefonso manifested to retreat. The *postmortem* findings confirmed that he was shot at the right side of his abdomen. The position of the victim, and the part of his body where the bullet passed through show that the sudden (sic) the act of shooting made by Jovito Armas, Jr. was purposely carried out without danger to himself of any retaliation from the victim. Hence, element of treachery apparently exist.

From the statements of the witnesses for the prosecution, a *prima facie* evidence sufficient to form a reasonable belief that Jaime Chua is likewise criminally liable as principal by induction.

In the incipiency, Jaime Chua appears to be the only adversary of Clarita Tan and thereafter the Baltazars whom Tan called up for intervention in that afternoon. There was an admission that Jaime Chua is the brother-in-law of Jovito Armas, Jr. and the latter likewise work for the former as bodyguard. Futhermore, Chua was present when the incident happened being just a few meters from Jovito Armas and from Ildefonso who was at the door of Chua's apartment when the altercation between him and Ildefonso began. Edison who was beside his father narrated that he saw Chua handed the gun to Jovito Armas simultaneously commanding the latter: "*Tirahin mo iyan*" pointing at his father. Clearly, a *prima facie* evidence shows that Jovito Armas could not have shot the deceased had not Chua ordered him to do so. Jovito Armas had no existing animosity with the deceased nor with Clarita Tan. Rather, it was Chua who apparently infuriated to the Clarita Tan and the persons who came to her assistance in that afternoon.

The positive and direct testimony of victim Edison Baltazar and other witnesses for the prosecution indeed support a finding of probable cause. Settled is the rule that the finding of probable cause is based neither on clear and convincing evidence of guilt nor evidence establishing absolute certainty of guilt. It is merely based on opinion and reasonable belief, and so it is enough that there exists such state of facts as would lead a person of ordinary caution and prudence to

believe or entertain an honest or strong suspicion that the accused committed the crime imputed.

Upon the other hand, the version of the defense that it was Ildefonso himself who shot his own son is, at the stage of the proceeding, incredible considering the close distance of the Ildefonso from Jovito Armas and Jaime Chua. Had he really willed to fire the gun, which the defense alleges Ildefonso possessed, to Chua and Armas there is a slim chance of missing them in four successive shots. Besides, the statements of the witnesses for the defense failed to provide clear details on how the shooting transpired in contract with the clear testimonies of the witnesses for the prosecution. At most the statements made for the defense are generally summation of facts, the details of which is yet to be supported by evidence to be presented and which should properly be ventilated in the course of the trial on the merits. Further, the Court is of the opinion that discussing the merits of the defense at this stage of the proceedings would result on probable prejudgment of the case.

WHEREFORE, in view of the foregoing, the Informations for Homicide and Frustrated Homicide are considered withdrawn and the Court hereby orders the reinstatement of the Informations for murder and frustrated murder in Criminal Case Nos. 97454966 and 9745496, respectively.[17]

In its questioned Decision, the Court of Appeals held that Judge Hidalgo gravely abused his discretion amounting to excess of jurisdiction in issuing the foregoing order.

There is excess of jurisdiction where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law.[18] And there is grave abuse of discretion where the capricious, whimsical, arbitrary or despotic manner in which the court, tribunal, board or officer exercises its/his judgment is said to be equivalent to lack of jurisdiction.[19]

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[17] *Rollo*, pp. 188-190.

[18] *Litton Mills, Inc. v. Galleon Trader, Inc.*, G.R. No. L-40867, 26 July 1988, 163 SCRA 489, 494-495.

[19] *Id*.

Judge Hidalgo is far from being abusive in rendering his questioned Order. He was merely following the injunctions of this Court that whenever a court is presented with a motion to dismiss or to withdraw an information or to exclude an accused from the charge (as heretofore discussed) upon the behest of the Secretary of Justice, the trial court has to determine the merits of the same, and not be subservient to the former.

The Court of Appeals insisted that the instant case did not involve a disposal that would call for the trial court's power to grant or deny the same.

This is inaccurate. Lourdes and Edison's *Motion for the Amendment of the Informations for Homicide and Frustrated Homicide,* filed on 30 April 1998, was questioning the dismissal of the cases against Jaime and the downgrading of the charges against Jovito. The exclusion of Jaime from the charges was not only disposing the cases against him, but also letting him free from any criminal liabilities arising from the death of Ildefonso Baltazar and the wounding of Edison.

As to the appellate court's holding that the 7 December 2004 Order of Judge Hidalgo revived the final order of Judge Cruz dated 18 November 1997, the same needs clarification.

It must be noted that the 18 November 1997 Order of Judge Cruz granting the motion of the prosecution to Withdraw the Information for Murder and Frustrated Murder was in effect an affirmation by the trial court of the Justice Secretary's directive to downgrade the crimes against Jovito and to exclude Jaime from these crimes. As discussed earlier, such grant by Judge Cruz, absent any independent evaluation on his part of the merits of the resolution of the Justice Secretary, constituted an abdication of his power, rendering the said Order void. The rule in this jurisdiction is that orders which are void can never attain finality.[20] Since the 18 November 1997 Order is void, the same has never attained finality. Besides, assuming *arguendo* that the 18 November 1997 Order was valid, the same could not have an

[20] *Villa v. Lazaro*, G.R. No. 69871, 24 August 1990, 189 SCRA 34, 44.

adverse effect on the 7 December 2004 Order of Judge Hidalgo. As has been noted, a timely motion for reconsideration was filed on the 18 November 1997 Order and Judge Cruz merely stated therein that he could not resolve the merits of the dropping of Jaime from all the cases and the downgrading of the crimes charged since the subject cases were already transferred to Judge Hidalgo. In the subject order of Judge Cruz, he even stated that the said issues could only be resolved by Judge Hidalgo, before whom the cases were pending. In other words, since Judge Cruz was divested of jurisdiction, the issue of the dropping of Jaime from all charges and the downgrading of the charges against Jovito was not resolved by the 18 November 1997 Order. It was therefore proper for Judge Hidalgo to resolve such issue since he had jurisdiction over the cases.

WHEREFORE, the Decision of the Court of Appeals dated 24 January 2007 nullifying the 7 December 2004 Order of the Regional Trial Court of Manila, Branch 37 is hereby *SET ASIDE*. The 7 December 2004 Order of RTC Branch 37, directing the filing of Informations for Murder and Frustrated Murder against Jovito Armas, Jr. and Jaime Chua, is *REINSTATED*.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Nachura,* and *Peralta, JJ.*, concur.

[*] Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[**] Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

THIRD DIVISION

[G.R. No. 180169. February 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AGUSTINO TAMOLON and ANTONIO CABAGAN,** *appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT IS IN THE BEST POSITION TO ASSESS CREDIBILITY.— In this regard, worthy of reiteration is the doctrine that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses, since it has observed firsthand their demeanor, conduct and attitude under grueling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings on and assessment of the credibility of a witness made by the trial court remain binding on an appellate tribunal. A trial court's assessment of the credibility of a witness is entitled to great weight, even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Thus, in *Valcesar Estioca y Macamay v. People of the Phils.*, we held: In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.

2. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL TESTIMONY OF THE WITNESS.— As to the appellants' defense which is based mainly on denial and alibi, nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the

positive and categorical testimony of the witness. In *People of the Phils. v. Carlito Mateo y Patawid*, we had occasion to state: Accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. x x x. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. x x x.

3. ID.; ID.; ID.; WEAK DEFENSES .— Indeed, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi is an inherently weak defense, which is viewed with suspicion and received with caution, because it can easily be fabricated. For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES; IN CASE OF HOMICIDE AND MURDER IT MAY BE AWARDED EVEN IN THE ABSENCE OF ANY ALLEGATION AND PROOF OF THE EMOTIONAL SUFFERING OF THE HEIRS; CASE AT BAR.— As to the award of additional damages, the CA is correct in ordering the appellants to pay the sum of ₱50,000.00, as moral damages, to the heirs of each of the victims. We held in *People v. Panado*: We grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages may be awarded even in the absence of any allegation and proof of the heirs' emotional suffering. x x x. With or without proof, this fact can never be denied; since it is undisputed, it must be considered proved.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

NACHURA, *J.*:

This is an appeal from the Decision[1] dated August 23, 2007 of the Court of Appeals (CA) affirming, with modification, the judgment[2] dated February 12, 1996 of the Regional Trial Court (RTC), Branch 21, Davao del Sur, convicting Agustino Tamolon[3] and Antonio Cabagan[4] (appellants) of Multiple Murder.

The relevant facts and proceedings:

Appellants, with several others,[5] were charged with Multiple Murder, docketed as Criminal Case No. XXI-377 (93), before the RTC, Branch 21, Bansalan, Davao del Sur, in an Information which reads:

> That sometime last March of 1984, in the Municipality of Magsaysay, Davao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns and bolos, with intent to kill, and taking advantage of superior strength conspiring, confederating and mutually helping one another, did, then and there willfully, unlawfully and feloniously attack, assault, shoot, hack and massacre Jaime Malabarbas, Ely Malabarbas, Judith Malabarbas, Wilfredo Panton and Gerry Panton, the herein victims/

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[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, concurring; *rollo*, pp. 4-12.

[2] Promulgated by RTC Judge Rodolfo A. Escovilla.

[3] Also referred to as "Agustino Tamulon" in the information for multiple murder.

[4] Referred to as "Tony Cabagan" in the information for multiple murder.

[5] The other accused are Ernesto Dawali *alias* Alang, Samson Cabagan, Kimpo Angga and Joseph Wagia.

offended parties[,] which gunshot and hack wounds caused to their instantaneous death, to the damage and prejudice of the offended parties.

CONTRARY TO LAW.[6]

Upon arraignment, the appellants pleaded not guilty.

The case was tried jointly with four other cases, where the appellants were likewise charged under separate informations, *viz.:* for arson,[7] for other forms of arson,[8] and for two counts of grave threats.[9] However, except for the herein appellants, all the other accused in these criminal cases remain at large.

The conflicting versions of the prosecution and the defense on the antecedent facts of the case, as summarized by the appellants in their brief, follow:

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

[7] Docketed as Criminal Case No. XXI-365 (93), in an information which reads:

That on or about December 15, 1991 at Tacul, Magsaysay, Davao del Sur, within the jurisdiction of this Court, the said accused with intent to gain, motivated by spite or hatred towards the owner of the property and acting as a syndicate, conspiring, confederating, helping one another and acting in concert did then and there willfully, unlawfully, and feloniously set on fire or burn the copra dryer (pugon) owned by Mrs. Vilma *vda. de* Ganad valued at ₱30,000.00 to the damage and prejudice of the said offended party.

CONTRARY TO LAW. (*Id.* at 17.)

[8] Docketed as Criminal Case No. XXI-364 (93), in an information which reads:

That sometime in March 1992, or thereabout, at Tacul, Magsaysay, Davao del Sur, within the jurisdiction of this Court, the said accused with intent to gain, motivated by spite or hatred to the property owner, and acting as a syndicate, conspiring, confederating and acting in concert, did then and there willfully, unlawfully and feloniously set on fire or burn the rubber plantation and/or farm of one Mrs. Vilma *vda. de* Ganad to the damage and prejudice of the said offended party in the amount of ₱20,000.00.

CONTRARY TO LAW. (*Id.* at 18.)

[9] Docketed as Criminal Case No. XXI-342 (92), in an information which reads:

Evidence for the prosecution tend to establish that at about 8:00 p.m. of March 15, 1984, the group of ERNESTO DAMALI *alias* ALANG, AGUSTINO TAMOLON, ANTONIO CABAGAN, SAMSON CABAGAN, KIMPO ANGGA, JOSEPH WAGIA, and MODESTO LANDAS were supposed to conduct a roving patrol. When they reached the house of the MALABARBAS in Sitio Maibu, Magsaysay[,] Davao del Sur, except for LANDAS, they opened fire at the MALABARBAS family and then hacked them which resulted to the death of JAIME, ELY, JUDITH, all surnamed MALABARBAS, WILFREDO and GERRY, both surnamed PANTON (T.S.N., pp. 8, 11 & 13, December 1, 1993).

EVIDENCE FOR THE DEFENSE:

Accused-appellant AGUSTINO TAMOLON who testified on April 5, 1995 stated that at the time of the massacre of the Malabarbas family in Sitio Maibu, Magsaysay, Davao del Sur on March 15, 1984, he was a resident of Santa Felomina, Makilala, North Cotabato, which is far from the boundary of Magsaysay, Davao del Sur. He lived as a farmer, and in 1984, he was engaged in honey gathering in the mountains of Makilala, North Cotabato. He does not know the Malabarbas family nor does he know anything about their massacre. He met MODESTO LANDAS in 1989 in Barangay Laya where he was assigned as a CAFGU. He also knows that LANDAS was arrested and detained at the Magsaysay Municipal Jail in Magsaysay, Davao del Sur, Landas was promised by the Municipal Mayor that he will help him (LANDAS) if he would name all those who participated in the commission of the crime.

Accused-appellant ANTONIO CABAGAN denied having participated in the massacre of the Malabarbas Family. He was arrested and detained in 1993 in Magsaysay, Davao del Sur, where MODESTO LANDAS was also detained. During their detention, VILMA GANAD

That sometime on January 1, 1992 at Tacul, Magsaysay, Davao del Sur, within the jurisdiction of this Court, the said accused conspiring, confederating, helping one another and acting in concert with other persons, whose identities are still to be determined but who will be charged appropriately once established later, did, then and there willfully, unlawfully and feloniously send a written note or letter to one Vilma Serapion *vda. de* Ganad demanding from the latter the amount of ₱60,000.00 and threatening, should she fail to deliver the sum, to burn her rubber trees and to kill her and other members of her family, to her damage and prejudice; that the threat letter was sent to the offended party through a middleman.

CONTRARY TO LAW. (*Id.*)

(whose rubber plantation and copra dryer were set on fire) and ANTONIO MALABARBAS, came to see him and LANDAS, and asked them to testify against DAMALI and TAMOLON, and in exchange, they will help them get out of jail and GANAD promised them money and support in the form of rice subsidy. He, however, refused because he "did not actually see the persons who did the crime, but LANDAS agreed (T.S.N., pp. 6-9, 11-13, June 8, 1995).

GREGORIO SUMAKBANG, the *Barangay Captain* of Magbuk, Tulunan, from 1965 to 1987, testified that CABAGAN and TAMOLON were never linked to the massacre of the MALABARBAS Family in 1984, and that it was only in 1993 that he came to know that they were linked and arrested for the massacre. He knows MODESTO LANDAS and was a sponsor of LANDAS at his wedding. LANDAS came to see him twice in 1993 and requested him not to get involved in the cases. He further stated that LANDAS testified against Tamolon and ANTONIO CABAGAN to free himself from jail and who was subsequently released in February, 1993. He also knows that MODESTO LANDAS died in September 1994, during the fiesta of Malungon (T.S.N., pp. 7-10, September 15, 1995).

SUNGKADAN AMIT, a pastor of the Christian Missionary alliance in Sta. Felomina, Makilala, North Cotabato, testified that he knows AGUSTINO TAMOLON. During the years 1983 to 1984, TAMOLON was a farmer and a honey gatherer, and that during these period he was not a member of any armed group in Makilala, North Cotabato (T.S.N., pp. 12-13, September 15, 1995).[10]

After trial, on February 12, 1996, the RTC rendered its Decision convicting both appellants of multiple murder. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, this Court hereby pronounces Agustino Tamolon and Antonio Cabagan guilty beyond reasonable doubt of the crime of Multiple Murder as defined and penalized under Art. 248 of the Revised Penal Code for the death of Ely Malabarbas, Wilfreda Panton, Judith Malabarbas, Jaime Malabarbas and Jerry Panton and hereby sentences each accused to suffer the penalty of *Reclusion Perpetua* for the death of Ely Malabarbas; *Reclusion Perpetua*, for the death of Wilfreda Panton; *Reclusion Perpetua*, for the death of Judith Malabarbas; *Reclusion*

[10] *Id.* at 58-60.

Perpetua, for the death of Jaime Malabarbas and *Reclusion Perpetua*, for the death of Jerry Panton subject to the limitation provided for under Article 70 of the Revised Penal Code and to indemnify the heirs of each victim the sum of FIFTY THOUSAND (₱50,000.00) PESOS pursuant to recent jurisprudence. x x x.

SO ORDERED.[11]

The RTC decision was elevated directly to the Supreme Court for automatic review. However, conformably with our ruling in *People v. Mateo*,[12] the case was, by Resolution dated December 13, 2004, referred to the CA. Parenthetically, no appeal was taken by the appellants in the other cases against them.[13] Accordingly, insofar as the other criminal cases are concerned, the Decision of the RTC of Davao del Sur had become final and executory.

On August 23, 2007, the CA promulgated its Decision, disposing as follows:

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[11] *Id.* at 25-28.

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

[13] The RTC disposed of the other criminal cases as follows:

In Criminal Case No. XXI-343(92) for Grave Threats, the Court finds accused Agustino Tamolon and Antonio Cabagan GUILTY beyond reasonable doubt of the crime of Grave Threats as defined and penalized under Article 282 par. 1 of the Revised Penal Code. Since the accused in threatening the complainant imposed a condition that of demanding the amount of ₱60,000.00 and killing the members of Vilma Ganad's family if the demand is not met, and therefore the crime threatened to be committed is Homicide, the Court has to lower the penalty by two degrees from *Reclusion Temporal* which is the penalty provided for the crime of Homicide, and since the threat was made through a middleman, the Court hereby imposes upon said accused Agustino Tamolon and Antonio Cabagan the Indeterminate Penalty of four (4) months and one (1) day of *arresto mayor* as minimum to six (6) years of *prision correccional* as maximum.

In Criminal Case No. XXI-343(92) the Court is at a loss as to the penalty to be imposed upon the accused considering that the crime the accused intended to commit is that of Malicious Mischief, should the private complainant fail to meet the demand but the prosecution failed to allege in the said Information the damage that the private complainant will suffer as a result of the crime of Malicious Mischief. Considering that the penalty in Malicious Mischief would depend on the amount of the damage occasioned

FOR THE REASONS STATED, the appealed Judgment dated February 12, 1996, of the Regional Trial Court, Branch 21, Davao del Sur in Criminal Case No. XXI-377(93), is AFFIRMED with the MODIFICATION that the accused is ORDERED to pay the heirs of *each* of the victim[s] ₱50,000.00 as indemnity, and ₱50,000.00 as moral damages. *Costs de officio.*

SO ORDERED.[14]

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thereby, and the Information failed to allege the amount of the damage, the Information aforesaid suffers from a very substantial defect. In view hereof, the Court ACQUITS accused Agustino Tamolon and Antonio Cabagan of Grave Threats in Criminal Case No. XXI-342(92).

In Criminal Case No. XXI-365(93) for Arson this Court finds accused Agustino Tamolon and Antonio Cabagan guilty beyond reasonable doubt of the crime of Arson defined and penalized under Art. 322 par. 4 of the Revised Penal Code as amended by P.D. 1613, and hereby sentences each of them to suffer an indeterminate penalty of four (4) months and one (1) day of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum and to indemnify private complainant Vilma Ganad the sum of THIRTY THOUSAND (₱30,000.00) PESOS for the burned copra dr[y]er.

In Criminal Case No. XXI-364(93) this Court finds accused Agustino Tamolon and Antonio Cabagan guilty beyond reasonable doubt of the crime of Other Forms of Arson defined and penalized under Art. 321 par. 2, sub-par. C of the Revised Penal Code as amended by P.D. 1613 and hereby sentences each accused to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *Reclusion Temporal* as maximum and to indemnify private complainant Vilma *Vda. de* Ganad the sum of TWENTY THOUSAND (₱20,000.00) PESOS for the damage caused to the partially burned rubber plantation. Both accused being detained are entitled to full credit of the preventive imprisonment they had undergone if they have signed their conformity to abide by the rules and regulations imposed upon inmates by the Provincial Jail authorities of Davao del Sur, otherwise, they shall be entitled only to four-fifths (4/5) of the preventive imprisonment they had undergone. The case with respect to accused Romy Solutan in Criminal Case No. XXI-365(93) for Arson is hereby ordered DISMISSED in view of the death of said accused and the cases against accused Ernesto Damali *alias* Alang, Samson Cabagan, Kimpo Angga, Joseph Wagia, Boy Cabagan and Joseph Madot are hereby ordered placed in the archive to be retrieved therefrom as soon as these accused shall have been arrested.

SO ORDERED. (CA *rollo*, pp. 26-28.)

[14] *Rollo*, p. 11.

Thus, this appeal, assigning the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS AGUSTINO TAMOLON AND ANTONIO CABAGAN GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MULTIPLE MURDER ON THE LONE, FABRICATED, ILL-MOTIVATED, AND POLLUTED TESTIMONY OF MODESTO LANDAS.

II

THE COURT *A QUO* GRAVELY ERRED IN ORDERING ACCUSED-APPELLANTS TO INDEMNIFY THE HEIRS OF EACH OF THE FIVE (5) VICTIMS THE SUM OF FIFTY THOUSAND PESOS.[15]

The appeal is bereft of merit.

The appellants cast aspersion on the credibility of lone prosecution witness, Modesto Landas, who admitted having been with the armed group that massacred the Malabarbas family. Moreover, they question the motive of Landas who, they said, told the authorities of the alleged criminal activities of the group only after he had been arrested and detained, nine years after the alleged incident. They then submit that "the evidence presented by the prosecution came from a polluted source," harping on Landas being with the roving team at the time of the commission of the crime, making him a co-conspirator.

However, the trial court gave full weight and credence to Landas' testimony. Evaluating the same, the court said:

Witness Modesto Landas was likewise very positive, direct, straightforward and convincing in his testimony against accused Agustino Tamolon and Antonio Cabagan. This witness never faltered or wavered in his claim about the participation of accused Agustino Tamolon and Antonio Cabagan in the massacre of the Malabarbas family and in setting fire to the dr[y]er of Vilma Ganad.[16]

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[15] *Id.* at 40.

[16] CA *rollo,* p. 75.

The CA also held that, by way of exception, the testimony of a co-conspirator may, even if uncorroborated, be sufficient for conviction when it is shown to be sincere in itself, because it is given unhesitatingly and in a straightforward manner, and is full of details by which their nature could not have been the result of a deliberate afterthought.[17]

In this regard, worthy of reiteration is the doctrine that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses, since it has observed firsthand their demeanor, conduct and attitude under grueling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings on and assessment of the credibility of a witness made by the trial court remain binding on an appellate tribunal.[18] A trial court's assessment of the credibility of a witness is entitled to great weight, even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[19] Thus, in *Valcesar Estioca y Macamay v. People of the Phils.*,[20] we held:

> In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.

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[17] Citing *People v. Cuya, Jr.,* 141 SCRA 351, 354 (1986).

[18] *People of the Phils. v. Budoy Gonzales y Lacdang,* G.R. No. 180448, July 28, 2008.

[19] *Rene Soriano @ "Renato" v. People of the Phils.,* G.R. No. 148123, June 30, 2008.

[20] G.R. No. 173876, June 27, 2008.

By the foregoing standards especially because the trial court's findings were concurred in by the CA, we are obliged to adopt the trial court's evaluation of Landas' credibility.

As to the appellants' defense which is based mainly on denial and alibi, nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness.[21] In *People of the Phils. v. Carlito Mateo y Patawid*,[22] we had occasion to state:

> Accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. x x x. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. x x x.

Indeed, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi is an inherently weak defense, which is viewed with suspicion and received with caution, because it can easily be fabricated.[23] For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.[24]

In the case at bench, no convincing evidence was presented by the defense to reinforce the appellants' denial and alibi.

As to the award of additional damages, the CA is correct in ordering the appellants to pay the sum of ₱50,000.00, as

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[21] *People of the Phils. v. Donato Bulasag y Arellano alias "Dong,"* G.R. No. 172869, July 28, 2008.

[22] G.R. No. 179036, July 28, 2008.

[23] *People v. Penaso,* 383 Phil. 200, 210 (2000).

[24] *People v. Fernandez,* G.R. No. 134762, July 23, 2002, 385 SCRA 38, 51.

moral damages, to the heirs of each of the victims. We held in *People v. Panado*:[25]

> We grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages may be awarded even in the absence of any allegation and proof of the heirs' emotional suffering. x x x. With or without proof, this fact can never be denied; since it is undisputed, it must be considered proved.

Given the foregoing disquisition, we find no reason to reverse the Decision of the CA upholding the conviction of accused-appellants.

WHEREFORE, the petition is *DENIED* and the assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 00463 is *AFFIRMED in toto*.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Chico-Nazario (Acting Chairperson),*[***] and *Peralta, JJ.,* concur.

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[25] G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

[**] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 568 dated February 12, 2009.

[***] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

THIRD DIVISION

[G.R. No. 180765. February 27, 2009]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **MANUEL N. DOMINGO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; ELEMENTARY RULE OF PROCEDURAL LAW THAT JURISDICTION OF THE COURT OVER THE SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT.— It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss; for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

2. ID.; ID.; ACTIONS.; CAUSE OF ACTION; CASE AT BAR.— A cause of action is a party's act or omission that violates the rights of the other. The right of the respondent that was violated, prompting him to initiate Civil Case No. 06-0200-CFM, was his right to receive payment for the financial obligation incurred by LMM Construction and to be preferred over the other creditors of LMM Construction, a right which pre-existed and, thus, was separate and distinct from the right to payment of LMM Construction under the Trade Contract.

3. ID.; ID.; JURISDICTION; JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC), EXPLAINED.— It is encouraged that disputes arising from construction contracts be referred first to the CIAC for their arbitration and settlement, since such cases would often require expertise and technical knowledge in construction. Hence, some

of the matters over which the CIAC may exercise jurisdiction, upon agreement of the parties to the construction contract, "include but [are] not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost. " Although the jurisdiction of the CIAC is not limited to the afore-stated enumeration, other issues which it could take cognizance of must be of the same or a closely related kind or species applying the principle of *ejusdem generis* in statutory construction.

4. ID.; ID.; ID.; ADJUDICATION OF THE COMPLAINT FOR SUM OF MONEY INVOLVES ANALYSIS OF PIECES OF EVIDENCE MORE SUITED FOR A TRIAL COURT RATHER THAN AN ARBITRATION BODY SPECIFICALLY DEVOTED TO CONSTRUCTION CONTRACTS.— The adjudication of Civil Case No. 06-0200-CFM necessarily involves the application of pertinent statutes and jurisprudence to matters such as obligations, contracts of assignment, and, if appropriate, even preference of credits, a task more suited for a trial court to carry out after a full-blown trial, than an arbitration body specifically devoted to construction contracts.

APPEARANCES OF COUNSEL

Lim Ocampo Leynes for petitioner.
Abella & Romero Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioner Fort Bonifacio Development Corporation, seeking to reverse and set aside the Decision dated 19 July 2007[1] and the Resolution

[1] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Vicente Q. Roxas and Ramon A. Garcia, concurring. *Rollo*, pp. 104-114.

dated 10 December 2007[2] of the Court of Appeals in CA-G.R. SP No. 97731. The appellate court, in its assailed Decision, affirmed the Order[3] of the Regional Trial Court (RTC) of Pasay City, Branch 109, in Civil Case No. 06-2000-CFM, denying the Motion to Dismiss of petitioner; and in its assailed Resolution, refused to reconsider its decision.

Petitioner, a domestic corporation duly organized under Philippine laws, is engaged in the real estate development business. Respondent is the assignee of L and M Maxco Specialist Engineering Construction (LMM Construction) of its receivables from petitioner.

On 5 July 2000, petitioner entered into a Trade Contract with LMM Construction for partial structural and architectural works on one of its projects, the Bonifacio Ridge Condominium. According to the said Contract, petitioner had the right to withhold the retention money equivalent to 5% of the contract price for a period of one year after the completion of the project. Retention money is a portion of the contract price, set aside by the project owner, from all approved billings and retained for a certain period to guarantee the performance by the contractor of all corrective works during the defect-liability period.[4]

Due to the defect and delay in the work of LMM Construction on the condominium project, petitioner unilaterally terminated the Trade Contract[5] and hired another contractor to finish the rest of the work left undone by LMM Construction. Despite the pre-termination of the Trade Contract, petitioner was liable

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[2] *Id.* at 116.

[3] Penned by Judge Tingaraan U. Guling; *rollo*, pp. 234-235.

[4] *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, 468 Phil. 305, 321 (2004).

[5] It was not shown on the records when the Trade Contract was terminated.

to pay LMM Construction a fraction of the contract price in proportion to the works already performed by the latter.[6]

On 30 July 2004, petitioner received the first Notice of Garnishment against the receivables of LMM Construction issued by the Construction Industry Arbitration Commission (CIAC) in connection with CIAC Case No. 11-2002 filed by Asia-Con Builders against LMM Construction, wherein LMM Construction was adjudged liable to Asia-Con Builders for the amount of ₱5,990,927.77.

On 30 April 2005, petitioner received a letter dated 18 April 2005 from respondent inquiring on the retention money supposedly due to LMM Construction and informing petitioner that a portion of the amount receivable by LMM Construction therefrom was already assigned to him as evidenced by the Deed of Assignment executed by LMM Construction in respondent's favor on 28 February 2005. LMM Construction assigned its receivables from petitioner to respondent to settle the alleged unpaid obligation of LMM Construction to respondent amounting to ₱804,068.21.

Through its letter dated 11 October 2005, addressed to respondent, petitioner acknowledged that LMM Construction did have receivables still with petitioner, consisting of the retention money; but petitioner also advised respondent that the retention money was not yet due and demandable and may be ascertained only after the completion of the corrective works undertaken by the new contractor on the condominium project. Petitioner also notified respondent that part of the receivables was also being garnished by the other creditors of LMM Construction.

Unsatisfied with the reply of petitioner, respondent sent another letter dated 14 October 2005 asserting his ownership over a portion of the retention money assigned to him and maintaining that the amount thereof pertaining to him can no longer be garnished to satisfy the obligations of LMM Construction to other persons since it already ceased to be the property of

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[6] Records do not show the estimated amount of receivables of LMM Construction.

LMM Construction by virtue of the Deed of Assignment. Attached to respondent's letter was the endorsement of LMM Construction dated 17 January 2005 approving respondent's claim upon petitioner in the amount of ₱804,068.21 chargeable against the retention money that may be received by LMM Construction from the petitioner.

Before respondent's claim could be fully addressed, petitioner, on 6 June 2005, received the second Notice of Garnishment against the receivables of LMM Construction, this time, issued by the National Labor Relations Commission (NLRC) to satisfy the liability of LMM Construction to Nicolas Consigna in NLRC Case No. 00-07-05483-2003.

On 13 July 2005, petitioner received an Order of Delivery of Money issued by the Office of the Clerk of Court and *Ex-Officio* Sheriff enforcing the first Notice of Garnishment and directing petitioner to deliver to Asia-Con Builders, through the Sheriff, the amount of ₱5,990,227.77 belonging to LMM Construction. In compliance with the said Order, petitioner was able to deliver to Asia-Con Builders on 22 July 2005 and on 11 August 2005 partial payments amounting to ₱1,170,601.81, covered by the appropriate Acknowledgement Receipts.

A third Notice of Garnishment against the receivables of LMM Construction, already accompanied by an Order of Delivery of Money, both issued by the RTC of Makati, Branch 133, was served upon petitioner on 26 January 2006. The Order enjoined petitioner to deliver the amount of ₱558,448.27 to the Sheriff to answer for the favorable judgment obtained by Concrete Masters, Inc. (Concrete Masters) against LMM Construction in Civil Case No. 05-164.

Petitioner, in a letter dated **31 January 2006**, categorically denied respondent's claim on the retention money, reasoning that after the completion of the rectification works on the condominium project and satisfaction of the various garnishment orders, there was no more left of the retention money of LMM Construction.

It would appear, however, that petitioner fully satisfied the first Notice of Garnishment in the amount of ₱5,110,833.44 only on **31 January 2006**,[7] the very the same date that it expressly denied respondent's claim. Also, petitioner complied with the Notice of Garnishment and its accompanying Order of Delivery of Money in the amount of ₱558,448.27 on **8 February 2006**, a week after its denial of respondent's claim.[8]

The foregoing events prompted respondent to file a Complaint for collection of sum of money, against both LMM Construction and petitioner, docketed as Civil Case No. 06-0200-CFM before the RTC of Pasay City, Branch 109.

Instead of filing an Answer, petitioner filed a Motion to Dismiss Civil Case No. 06-0200-CFM on the ground of lack of jurisdiction over the subject matter. Petitioner argued that since respondent merely stepped into the shoes of LMM Construction as its assignor, it was the CIAC and not the regular courts that had jurisdiction over the dispute as provided in the Trade Contract.

On 6 June 2006, the RTC issued an Order denying the Motion to Dismiss of petitioner, ruling that a full-blown trial was necessary to determine which one between LMM Construction and petitioner should be made accountable for the sum due to respondent.

Petitioner sought remedy from the Court of Appeals by filing a Petition for *Certiorari*, docketed as CA-G.R. SP No. 97731, challenging the RTC Order dated 6 June 2006 for having been rendered by the trial court with grave abuse of discretion.

In its Decision promulgated on 19 July 2007, the Court of Appeals dismissed the Petition for *Certiorari* and affirmed the 6 June 2006 Order of the RTC denying the Motion to Dismiss of petitioner.The appellate court rejected the argument of petitioner that respondent, as the assignee of LMM Construction, was bound by the stipulation in the Trade Contract that disputes

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[7] Official Receipt Nos. 3292786-A, 3293457-A and 21270426; records, Vol. IV, pp. 95-97.

[8] *Id.* at 98.

arising therefrom should be brought before the CIAC. The Court of Appeals declared that respondent was not privy, but a third party, to the Trade Contract; and money claims of third persons against the contractor, developer, or owner of the project are lodged in the regular courts and not in the CIAC.

Similarly ill-fated was petitioner's Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution dated 10 December 2007.

Petitioner now comes to this Court *via* this instant Petition for Review on *Certiorari* praying for the reversal of the 19 July 2007 Decision of the Court of Appeals and 6 June 2006 Order of the RTC and, ultimately, for the dismissal of Civil Case No. 06-0200-CFM pending before the RTC.

For the resolution of this Court is the sole issue of:

WHETHER OR NOT THE RTC HAS JURISDICTION OVER CIVIL CASE NO. 06-0200-CFM.

The jurisdiction of CIAC is defined under Executive Order No. 1008 as follows:

SECTION 4. *Jurisdiction*.—The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

In assailing the 19 July 2007 Decision of the Court of Appeals, petitioner invoked Article 1311 of the Civil Code on relativity of contracts. According to said provision, all contracts shall only take effect between the contracting parties, **their assigns** and heirs except when the rights and obligations arising from the contract are not transmissible. Petitioner argues that the appellate court, in recognizing the existence of the Deed of Assignment executed by LMM Construction — in favor of respondent — of its receivables under the Trade Contract, should have considered the concomitant result thereof, *i.e.*, that respondent became a party to the Trade Contract and, therefore, bound by the arbitral clause therein.

Respondent counters that the CIAC is devoid of jurisdiction over money claims of third persons against the contractor, developer or owner of the project. The jurisdiction of the CIAC is limited to settling disputes arising among contractors, developers and/or owners of construction projects. It does not include the determination of who among the many creditors of the contractor should enjoy preference in payment of its receivables from the developer/owner.

It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss; for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[9] Accordingly, the issues in the instant case can only be properly resolved by

[9] *Serdoncillo v. Benolirao*, 358 Phil. 83, 95 (1998).

an examination and evaluation of respondent's allegations in his Complaint in Civil Case No. 06-0200-CFM.

The allegations in respondent's Complaint are clear and simple: That LMM Construction had an outstanding obligation to respondent in the amount of ₱804,068.21; that in payment of the said amount, LMM Construction assigned to respondent its receivables from petitioner, which assignment was properly made known to petitioner as early as 18 April 2005; that despite due notice of such assignment, petitioner still refused to deliver the amount assigned to respondent, giving preference, instead, to the garnishing creditors of LMM Construction; that at the time petitioner was notified of the assignment, only one notice of garnishment, the first Notice of Garnishment, was received by it; that had petitioner properly recognized respondent's right as an assignee of a portion of the receivables of LMM Construction, there could have been sufficient residual amounts to satisfy respondent's claim; and that, uncertain over which one between LMM Construction and petitioner he may resort to for payment, respondent named them both as defendants in Civil Case No. 06-0200-CFM. A scrupulous examination of the aforementioned allegations in respondent's Complaint unveils the fact that his cause of action springs not from a violation of the provisions of the Trade Contract, but from the non-payment of the monetary obligation of LMM Construction to him.

A cause of action is a party's act or omission that violates the rights of the other.[10] The right of the respondent that was violated, prompting him to initiate Civil Case No. 06-0200-CFM, was his right to receive payment for the financial obligation incurred by LMM Construction and to be preferred over the other creditors of LMM Construction, a right which pre-existed and, thus, was separate and distinct from the right to payment of LMM Construction under the Trade Contract.

[10] Revived Rules of Court, Rule 2.

Petitioner's unceasing reliance on Article 1311[11] of the Civil Code on relativity of contracts is unavailing. It is true that respondent, as the assignee of the receivables of LMM Construction from petitioner under the Trade Contract, merely stepped into the shoes of LMM Construction. However, it bears to emphasize that the right of LMM Construction to such receivables from petitioner under the Trade Contract is not even in dispute in Civil Case No. 06-0200-CFM. What respondent puts in issue before the RTC is the purportedly arbitrary exercise of discretion by the petitioner in giving preference to the claims of the other creditors of LMM Construction over the receivables of the latter.

It is encouraged that disputes arising from construction contracts be referred first to the CIAC for their arbitration and settlement, since such cases would often require expertise and technical knowledge in construction. Hence, some of the matters over which the CIAC may exercise jurisdiction, upon agreement of the parties to the construction contract, "include but [are] not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost."[12] Although the jurisdiction of the CIAC is not limited to the afore-stated enumeration, other issues which it could take cognizance of

[11] Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[12] Second paragraph, Section 4 of Executive Order No. 1008.

must be of the same or a closely related kind or species applying the principle of *ejusdem generis* in statutory construction.

Respondent's claim is not even construction-related at all. *Construction* is defined as referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment.[13] Petitioner's insistence on the application of the arbitration clause of the Trade Contract to respondent is clearly anchored on an erroneous premise that respondent is seeking to enforce a right under the same. Again, the right to the receivables of LMM Construction from petitioner under the Trade Contract is not being impugned herein. In fact, petitioner readily conceded that LMM Construction still had receivables due from petitioner, and respondent did not even have to refer to a single provision in the Trade Contract to assert his claim. What respondent is demanding is that a portion of such receivables amounting to ₱804,068.21 should have been paid to him first before the other creditors of LMM Construction, which, clearly, does not require the CIAC's expertise and technical knowledge of construction.

The adjudication of Civil Case No. 06-0200-CFM necessarily involves the application of pertinent statutes and jurisprudence to matters such as obligations, contracts of assignment, and, if appropriate, even preference of credits, a task more suited for a trial court to carry out after a full-blown trial, than an arbitration body specifically devoted to construction contracts.

This Court recognizes the laudable objective of voluntary arbitration to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. It cannot, however, altogether surrender to arbitration those cases, such as the one at bar, the extant

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[13] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G.R. No. 144792, 31 January 2006, 481 SCRA 209, 218-219.

facts of which plainly call for the exercise of jurisdiction by the regular courts for their resolution.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Decision dated 19 July 2007 and the Resolution dated 10 December 2007 of the Court of Appeals in CA-G.R. SP No. 97731 are hereby *AFFIRMED in toto*. Costs against the petitioner.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Nachura,* and *Peralta, JJ.*, concur.

THIRD DIVISION

[G.R. No. 168918. March 2, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HERMENEGILDO DUMLAO *y* CASTILIANO and EMILIO LA'O *y* GONZALES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; SUFFICIENCY OF; TEST. — The fundamental test in determining the sufficiency of the material averments of an information is whether the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde*, or matters extrinsic of the Information, are not to be considered.

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[*] Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[**] Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

2. CRIMINAL LAW; VIOLATION OF SECTION 3(G) OF REPUBLIC ACT NO. 3019; ELEMENTS. —The elements of the crime under Section 3(g) of Republic Act No. 3019 are as follows: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; GROUNDS. — Insufficiency of evidence is not one of the grounds of a Motion to Quash. The grounds, as enumerated in Section 3, Rule 117 of the Revised Rules of Criminal Procedure, are as follows: "(a) That the facts charged do not constitute an offense; (b) That the court trying the case has no jurisdiction over the offense charged; (c) That the court trying the case has no jurisdiction over the person of the accused; (d) That the officer who filed the information had no authority to do so; (e) That it does not conform substantially to the prescribed form; (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law; (g) That the criminal action or liability has been extinguished; (h) That it contains averments which, if true, would constitute a legal excuse or justification; and (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent."

4. ID.; ID.; TRIAL; DEMURRER TO EVIDENCE; INSUFFICIENCY OF EVIDENCE; A GROUND FOR DISMISSAL OF AN ACTION ONLY AFTER THE PROSECUTION RESTS ITS CASE. — Insufficiency of evidence is a ground for dismissal of an action only after the prosecution rests its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure provides: "Sec. 23. *Demurrer to evidence*. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court."

5. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; RESOLUTION AND MINUTES, DISTINGUISHED. — A resolution is distinct and different from the minutes of the meeting. A board *resolution* is a formal action by a corporate

board of directors or other corporate body authorizing a particular act, transaction, or appointment. It is ordinarily special and limited in its operation, applying usually to some single specific act or affair of the corporation; or to some specific person, situation or occasion. On the other hand, *minutes* are a brief statement not only of what transpired at a meeting, usually of stockholders/members or directors/trustees, but also at a meeting of an executive committee. The minutes are usually kept in a book specially designed for that purpose, but they may also be kept in the form of memoranda or in any other manner in which they can be identified as minutes of a meeting.

6. ID.; ID.; ID.; MEETINGS; MINUTES; NEED NOT BE SIGNED BY ALL THE MEMBERS OF THE BOARD; CASE AT BAR. — The Sandiganbayan concluded that since only three members out of seven signed the minutes of the meeting of 23 April 1982, the resolution approving the Lease-Purchase Agreement was not passed by the GSIS Board of Trustees. Such conclusion is erroneous. The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the Corporation Code of the Philippines that requires that the minutes of the meeting should be signed by all the members of the board.

7. ID.; ID.; ID.; ID.; ID.; THE SIGNATURE OF THE CORPORATE SECRETARY GIVES THE MINUTES OF THE MEETINGS PROBATIVE VALUE AND CREDIBILITY; CASE AT BAR. — The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility. In this case, Antonio Eduardo B. Nachura, Deputy Corporate Secretary, recorded, prepared and certified the correctness of the minutes of the meeting of 23 April 1982; and the same was confirmed by Leonilo M. Ocampo, Chairman of the GSIS Board of Trustees. Said minutes contained the statement that the board approved the sale of the properties, subject matter of this case, to respondent La'o. The minutes of the meeting of 23 April 1982 were prepared

by the Deputy Corporate Secretary of the GSIS Board of Trustees. Having been made by a public officer, the minutes carry the presumption of regularity in the performance of his functions and duties. Moreover, the entries contained in the minutes are *prima facie* evidence of what actually took place during the meeting, pursuant to Section 44, Rule 130 of the Revised Rule on Evidence.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; REQUISITES. — To raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first. The first jeopardy attaches only (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.

9. ID.; ID.; ID.; ID.; A JUDGMENT WHICH IS VOID FOR LACK OF DUE PROCESS IS EQUIVALENT TO EXCESS OR LACK OF JURISDICTION AND CANNOT BE THE BASIS OF DOUBLE JEOPARDY; CASE AT BAR. — In the instant case, double jeopardy has not yet set in. The first jeopardy has not yet attached. There is no question that four of the five elements of legal jeopardy are present. However, we find the last element – valid conviction, acquittal, dismissal or termination of the case – wanting. x x x [T]he Sandiganbayan violated the prosecution's right to due process. The prosecution was deprived of its opportunity to prosecute its case and to prove the accused's culpability. The dismissal was made in a capricious and whimsical manner. The trial court dismissed the case on a ground not invoked by the respondent. The Sandiganbayan dismissed the case for insufficiency of evidence, while the ground invoked by the respondent was that *the facts charged did not constitute an offense.* The dismissal was clearly premature, because any dismissal based on insufficiency of evidence may only be made after the prosecution rests its case and not at any time before then. A purely capricious dismissal of an information deprives the State of a fair opportunity to prosecute and convict. It denies the prosecution a day in court. It is

void and cannot be the basis of double jeopardy. The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Where the denial of the fundamental right to due process is apparent, a decision in disregard of the right is void for lack of jurisdiction. In the instant case, there was **no error of judgment but a denial of due process resulting in loss of jurisdiction.** Respondent Dumlao would not be placed in double jeopardy because, from the very beginning, the Sandiganbayan had acted without jurisdiction. Precisely, any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist. Otherwise put, the dismissal of the case below was invalid for lack of a fundamental prerequisite, that is, due process. In rendering the judgment of dismissal, the trial court acted without or in excess of jurisdiction, for a judgment which is void for lack of due process is equivalent to excess or lack of jurisdiction. This being the case, the prosecution is allowed to appeal because it was not given its day in court.

10. CRIMINAL LAW; CONSPIRACY; WHEN THE ACQUITTAL OR DEATH OF A CO-CONSPIRATOR DOES NOT REMOVE THE BASIS OF A CHARGE OF CONSPIRACY, ONE DEFENDANT MAY BE FOUND GUILTY OF THE OFFENSE. — A conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.

11. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; CONSTITUTIONAL RIGHT TO EQUAL PROTECTION; NOT VIOLATED IN CASE AT BAR.— We are not convinced that respondent Dumlao was unfairly discriminated against and his constitutional right to equal protection violated. It must be remembered that the manner in which the prosecution of the case is handled is within the sound discretion of the prosecutor, and the non-inclusion of other guilty persons is irrelevant to the case against the accused. We find that there was no clear and intentional discrimination in charging respondent Dumlao. A discriminatory purpose is never presumed. It must be remembered that it was not solely respondent who was

charged, but also five of the seven board members. If, indeed, there were discrimination, respondent Dumlao alone could have been charged. But this was not the case. Further, the fact that the dismissal of the case against his co-accused Canlas and Clave was not appealed is not sufficient to cry discrimination. This is likewise true for the non-inclusion of the two government officials who signed the Lease-Purchase Agreement and the other two board members. Mere speculation, unsupported by convincing evidence, cannot establish discrimination on the part of the prosecution and the denial to respondent of the equal protection of the laws.

APPEARANCES OF COUNSEL

Benjamin A. Moraleda, Jr. & Bonifacio A. Tavera, Jr. for H.C. Dumlao.

D E C I S I O N

CHICO-NAZARIO, *J.*:

On appeal is the Resolution[1] of the Sandiganbayan in Criminal Case No. 16699 dated 14 July 2005 which granted the Motion to Dismiss/Quash of respondent Hermenegildo C. Dumlao and dismissed the case against him. The Sandiganbayan likewise ordered the case against respondent Emilio G. La'o archived. The dispositive portion of the resolution reads:

WHEREFORE, finding the Motion to Dismiss/Quash filed by accused Hermenegildo C. Dumlao to be meritorious this case as against him is hereby ordered DISMISSED.

The cash bond posted by him is hereby cancelled and accused Dumlao is allowed to withdraw the same from the Cashier's Office of this Court.

The hold departure order issued by this Court against herein accused Dumlao is lifted and set aside.

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[1] Penned by Associate Justice Godofredo L. Legaspi with Associate Justices Efren N. de la Cruz and Norberto Y. Geraldez, concurring; *rollo*, pp. 13-19.

The Commissioner of the Bureau of Immigration and Deportation is ordered to cancel the name of accused Hermenegildo C. Dumlao from the Bureau's Hold Departure List.

This case as against Emilio La'o who is still at large is ordered archived.[2]

On 19 July 1991, an Amended Information was filed before the Sandiganbayan charging respondents Dumlao and La'o, Aber P. Canlas, Jacobo C. Clave, Roman A. Cruz, Jr. and Fabian C. Ver with violation of Section 3(g) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The case was docketed as Criminal Case No. 16699. The accusatory portion of the information reads:

That on or about May 10, 1982, or for sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused Hermenegildo C. Dumlao, Aber Canlas, Jacobo C. Clave, Roman A. Cruz, Jr., and Fabian C. Ver, being then the members of the Board of Trustees of the Government Service Insurance System (GSIS) which is a government corporation and therefore all public officers, conspiring and confederating together and mutually helping one another, while in the performance of their official functions, did then and there willfully, unlawfully and criminally enter into contract of lease-purchase with Emilio G. La'o, a private person whereby the GSIS agreed to sell to said Emilio G. La'o, a GSIS acquired property consisting of three parcels of land with an area of 821 square meters together with a 5-storey building situated at 1203 A. Mabini St., Ermita, Manila, known as the Government Counsel Centre for the sum of ₱2,000,000.00 with a down payment of ₱200,000.00 with the balance payable in fifteen years at 12% interest per annum compounded yearly, with a yearly amortization of ₱264,278.37 including principal and interest granting Emilio G. La'o the right to sub-lease the ground floor for his own account during the period of lease, from which he collected yearly rentals in excess of the yearly amortization which contract is manifestly and grossly disadvantageous to the government.[3]

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[2] *Id.* at 19.

[3] Records, Vol. 1, pp. 204-205.

When arraigned on 9 November 2004, respondent Dumlao, with the assistance of counsel *de parte*, pleaded "not guilty" to the offense charged.[4] As agreed upon by the prosecution and respondent Dumlao, a *Joint Stipulation of Facts and Admission of Exhibits* was submitted to the court on 10 January 2005.[5] On the basis thereof, the court issued on 19 January 2005 the following Pre-Trial Order:

PRE-TRIAL ORDER

The Prosecution and Accused Hermenegildo C. Dumlao, as assisted by counsel, submitted their "JOINT STIPULATION OF FACTS AND ADMISSION OF EXHIBITS" dated December 21, 2004, quoted hereunder:

I. STIPULATION OF FACTS

The Prosecution and Accused Dumlao jointly stipulate on the following:

1. That at the time material to this case, the following were members of the Board of Trustees of the Government Service Insurance System (GSIS):

a. Hermenegildo C. Dumlao
b. Aber P. Canlas
c. Jacobo C. Clave
d. Roman A. Cruz
e. Fabian C. Ver
f. Leonilo M. Ocampo and
g. Benjamin C. Morales;

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[4] Records, Vol. 7, p. 250.

Emilio La'o was arraigned on 7 August 1991 (Records, Vol. I, pp. 249-251). The case against him was dismissed because of his death.

The cases against Roman A. Cruz, Jr. and Fabian C. Ver were likewise dismissed on the account of their deaths. (Records, Vol. VI, p. 125.)

Aber P. Canlas and Jacobo C. Clave were arraigned on 20 January 2004. (Records, Vol. VI, pp. 505-506). The cases against them were dismissed on 4 October 2004. (Records, Vol. VII, pp. 233-241).

[5] *Id.* at 306-311.

2. That Emilio Gonzales La'o is a private person;

3. That GSIS was the owner of a property consisting of three (3) parcels of land with an area of 821 square meters, together with a 5-storey building situated as 1203 A. Mabini Street, Ermita, Manila known as the Government Counsel Centre;

4. That on June 22, 1978, the GSIS entered into a Lease-Purchase Agreement with the Republic of the Philippines through the Office of the Government Corporate Counsel (OGCC) involving the property described under paragraph 3 above, for a consideration of ₱1.5 million payable in equal yearly amortizations for a period of fifteen (15) years with zero interest. The period should commence after the GSIS shall have renovated the building according to the specification of the OGCC;

5. That in accordance with the June 22, 1978 Lease-Purchase Agreement, the 5-storey building was renovated. Thereafter, the OGCC occupied the same;

6. That Ferdinand E. Marcos was, at all-times material hereto, the President of the Republic of the Philippines;

7. That then President was at all times material hereto, legislating through the issuance of Presidential Decrees, Executive Orders and the like;

8. That among the three Members of the Board who signed the Minutes only accused Dumlao was charged in this case;

9. That there are only seven (7) members of the Board of Trustees of the GSIS present during the board meeting held on April 23, 1982;

10. Exhibit "A" and "1" entitled Agreement was signed by Luis A. Javellana, for and in behalf of the GSIS, Felipe S. Aldaña, for and [in] behalf of the Republic of the Philippines thru Government Corporate Counsel, and Emilio Gonzales La'o, as buyer.

II. DOCUMENTARY EVIDENCE

The Prosecution and Accused Dumlao admitted the authenticity and due execution of the following documentary evidence:

EXHIBITS		DESCRIPTION
"A" (also Exhibit "1" for accused Dumlao		The Agreement executed by and among the GSIS, the Republic of the Philippines, through OGCC and accused Emilio Gonzales La'o on May 10, 1982, consisting of 11 pages;
"B" (also Exhibit "2" for accused Dumlao)		The pertinent portion, including the signature page, of Minutes of Meeting No. 14 of the GSIS Board of Trustees held on April 23, 1982, specifically containing item no. 326 regarding the approval of the proposed Agreement by and among the GSIS, the Republic of the Philippines through the OGCC and accused Emilio Gonzales La'o, consisting of 5 pages.

III. RESERVATION

The Prosecution and Accused Dumlao reserve the right to mark and offer in evidence the documents mentioned in their respective Pre-Trial Briefs, as well as to present the witnesses listed therein.

IV. ISSUE

Whether or not accused Dumlao is liable for violation of Section 3(g), RA 3019.

WHEREFORE, with the submission by the parties of their Joint Stipulation of Facts, the pre-trial is deemed terminated. Let the above-mentioned joint stipulation as recited in this pre-trial order bind the parties, limit the trial to matters not disposed of, and control the course of the proceedings in this case unless modified by the Court to prevent manifest injustice.[6]

[6] *Id.* at 313-315.

On 21 February 2005, respondent Dumlao filed a Motion to Dismiss/Quash on the ground that the facts charged do not constitute an offense.[7] He stated that the prosecution's main thrust against him was the alleged approval by the Government Service Insurance System (GSIS) Board of Trustees — of which he was a member — of the Lease-Purchase Agreement entered into by and among the GSIS, the Office of the Government Corporate Counsel (OGCC) and respondent La'o. He argued that the allegedly approved Board Resolution was not in fact approved by the GSIS Board of Trustees, contrary to the allegations in the information. Since the signatures of Fabian Ver, Roman Cruz, Aber Canlas and Jacobo Clave did not appear in the minutes of the meeting held on 23 April 1982, he said it was safe to conclude that these people did not participate in the alleged approval of the Lease-Purchase Agreement. This being the case, he maintained that there was no quorum of the board to approve the supposed resolution authorizing the sale of the GSIS property. There being no approval by the majority of the Board of Trustees, there can be no resolution approving the Lease-Purchase Agreement. The unapproved resolution, he added, proved his innocence. He further contended that the person to be charged should be Atty. Luis Javellana, who sold the subject property to respondent La'o without the proper authority. He likewise wondered why he alone was charged without including the other two signatories in the minutes of the meeting held on 23 April 1982.

On 14 July 2005, the Sandiganbayan issued the assailed resolution. It ruled:

> The Court finds the motion meritorious. The minutes of the meeting held on April 23, 1982 of the Board of Trustees of GSIS shows that the Board failed to approve the Lease-Purchase Agreement in question. As stipulated upon by both parties out of the seven (7) members of GSIS Board of Trustees only three (3) members signed the minutes, the others did not. In order to validly pass a resolution at least a majority of four (4) members of the Board of Trustees must sign and approve the same.

[7] *Id.* at 322-327.

No amount of evidence can change the fact that Resolution dated April 23, 1982 was not validly passed by the Board of Trustees of GSIS since it was only signed by three (3) members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against herein movant-accused Hermenegildo C. Dumlao.[8]

On 2 September 2005, the People of the Philippines, represented by the Office of the Ombudsman, thru the Office of the Special Prosecutor, filed a petition for *certiorari*[9] under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Sandiganbayan Resolution dismissing the case against respondent Dumlao. Petitioner raises the following issues:

I) WHETHER OR NOT THE COURT *A QUO* ACTED IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT RESOLVED TO DISMISS CRIMINAL CASE NO. 16699 AS AGAINST RESPONDENT DUMLAO AFTER THE PRE-TRIAL AND BEFORE THE PETITIONER COULD PRESENT ITS WITNESSES AND FORMALLY OFFER ITS EXHIBITS.

II) WHETHER OR NOT THE SIGNATURES OF THE MAJORITY OF THE GSIS BOARD OF TRUSTEES ARE NECESSARY ON THE MINUTES OF MEETING NO. 14 DATED 23 APRIL 1982 TO GIVE FORCE AND EFFECT TO RESOLUTION NO. 326 APPROVING THE PROPOSED AGREEMENT BY AND AMONG THE GSIS, THE OGCC AND RESPONDENT EMILIO LA'O.

III) WHETHER OR NOT THE VALIDITY OF THE CONTRACT IS AN ESSENTIAL ELEMENT OF VIOLATION OF SECTION 3(G), RA 3019.

IV) WHETHER OR NOT THE COURT *A QUO* ACTED IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT RESOLVED TO ARCHIVE THE CASE AGAINST RESPONDENT LA'O.

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[8] *Rollo,* p. 18.

[9] Same was filed after this Court granted the Office of the Special Prosecutor's motion for extension within which to file the petition for review on *certiorari*. (*Rollo*, pp. 25-233.)

On the other hand, respondent Dumlao proffers the following grounds to support the dismissal of the case against him:

1. TO GIVE DUE COURSE TO THE OMBUDSMAN'S PETITION IS TO PLACE DUMLAO IN DOUBLE JEOPARDY, IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS;

2. THE SANDIGANBAYAN COULD NOT BE SAID TO HAVE GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION BECAUSE IT MERELY FOLLOWED THE RULE ON PRE-TRIAL AND DECIDED THE CASE ON THE BASIS OF THE FACTS STIPULATED IN THE PRE-TRIAL;

3. THE FACTS AS AGREE (SIC) BY THE PROSECUTION AND RESPONDENT DUMLAO IN THEIR PRE-TRIAL STIPULATION AND AS APPROVED BY THE SANDIGANBAYAN SHOWED THAT HE DID NOT COMMIT ANY CRIME; AND

4. CONTINUALLY PROSECUTING DUMLAO, TO THE EXCLUSION OF OTHER GSIS TRUSTEES, UNDER THE CIRCUMSTANCES OBTAINING, CONSTITUTES UNFAIR DISCRIMINATION AND VIOLATION OF HIS CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW.[10]

Petitioner argues it was denied its right to due process when the court *a quo* dismissed the case against respondent Dumlao after pre-trial and before it could present its witnesses and formally offer its exhibits. The court *a quo* deprived it of the opportunity to prove its case – that the Resolution dated 23 April 1982 was passed by the GSIS Board of Trustees and that the Lease-Purchase Agreement was grossly and manifestly disadvantageous to the government.

Respondent Dumlao was charged, he being one of the members of the GSIS Board of Trustees who allegedly approved the lease-purchase of the subject GSIS properties consisting of three parcels of land with an area of 821 square meters, together with a five-storey building, in favor of respondent La'o, which lease-purchase agreement was deemed by the Office of the Ombudsman to be grossly disadvantageous to the government.

[10] *Id.* at 259.

A review of the Motion to Dismiss/Quash filed by respondent Dumlao reveals that the ground he invoked was that "*the facts charged do not constitute an offense*." He contends that the alleged approved Board Resolution was not approved by the GSIS Board of Trustees, contrary to the allegation in the information. Since the signatures of four out of the seven members of the board did not appear in the minutes of the meeting held on 23 April 1982, there was no quorum present or no majority that approved the supposed resolution. This being the case, he asserts that there was no resolution adopted by the GSIS Board of Trustees approving the sale of the subject properties to respondent La'o.

The Sandiganbayan, basing its resolution on the Pre-trial Stipulation entered into by the prosecution and respondent Dumlao, dismissed the case against the latter, since it found that the GSIS Board of Trustees failed to approve or validly pass the Lease-Purchase Agreement, because only three out of the seven members of the Board signed the minutes of the meeting held on 23 April 1982. It explained that, "no amount of evidence can change the fact that the Resolution dated April 23, 1982 was not validly passed by the Board of Trustees of GSIS since it was only signed by three members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against herein movant-accused Hermenegildo C. Dumlao."

The ground raised by respondent Dumlao in his Motion to Quash/Dismiss is that *the facts charged do not constitute an offense*. The fundamental test in determining the sufficiency of the material averments of an information is whether the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde*, or matters extrinsic of the Information, are not to be considered.[11]

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[11] *Go v. Fifth Division, Sandiganbayan*, G.R. No. 172602, 13 April 2007, 521 SCRA 270, 291.

The elements of the crime under Section 3(g) of Republic Act No. 3019 are as follows: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[12]

After examining the information, we find that the facts alleged therein, if hypothetically admitted, will prove all the elements of Section 3(g) as against respondent Dumlao.

It can be gathered from the resolution of the Sandiganbayan that it did consider the ground invoked by Dumlao (that *the facts charged do not constitute an offense)*; otherwise, it could have denied respondent Dumlao's motion. From the reasoning given by the Sandiganbayan, it is clear that it dismissed the case because of *insufficiency of evidence*.

Insufficiency of evidence is not one of the grounds of a Motion to Quash. The grounds, as enumerated in Section 3, Rule 117 of the Revised Rules of Criminal Procedure, are as follows:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

[12] *Dans, Jr. and Marcos v. Sandiganbayan*, 349 Phil. 434, 460 (1998).

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

Insufficiency of evidence is a ground for dismissal of an action only after the prosecution rests its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure provides:

Sec. 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

In the case under consideration, the Sandiganbayan dismissed the case against respondent for insufficiency of evidence, even without giving the prosecution the opportunity to present its evidence. In so doing, it violated the prosecution's right to due process. It deprived the prosecution of its opportunity to prosecute its case and to prove the accused's culpability.

It was therefore erroneous for the Sandiganbayan to dismiss the case under the premises. Not only did it not consider the ground invoked by respondent Dumlao; it even dismissed the case on a ground not raised by him, and not at the appropriate time. The dismissal was thus without basis and untimely.

On the second issue raised by petitioner, it maintains that the Sandiganbayan erred in equating, or confusing, the minutes of the meeting of 23 April 1982 with Resolution No. 326, which allegedly approved the lease-purchase agreement on the GSIS properties, entered into with respondent La'o. It argues that the Sandiganbayan incorrectly ruled that the Resolution dated 23 April 1982 regarding the lease-purchase of the GSIS properties was not approved, because only three out of the seven members of the GSIS Board of Trustees signed the minutes of the meeting of 23 April 1982.

We agree with petitioner that the Sandiganbayan erred in equating the minutes of the meeting with the supposed resolution

of the GSIS Board of Trustees. A resolution is distinct and different from the minutes of the meeting. A board *resolution* is a formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment.[13] It is ordinarily special and limited in its operation, applying usually to some single specific act or affair of the corporation; or to some specific person, situation or occasion.[14] On the other hand, *minutes* are a brief statement not only of what transpired at a meeting, usually of stockholders/members or directors/trustees, but also at a meeting of an executive committee. The minutes are usually kept in a book specially designed for that purpose, but they may also be kept in the form of memoranda or in any other manner in which they can be identified as minutes of a meeting.[15]

The Sandiganbayan concluded that since only three members out of seven signed the minutes of the meeting of 23 April 1982, the resolution approving the Lease-Purchase Agreement was not passed by the GSIS Board of Trustees. Such conclusion is erroneous. The non-signing by the majority of the members of the GSIS Board of Trustees of the said minutes does not necessarily mean that the supposed resolution was not approved by the board. The signing of the minutes by all the members of the board is not required. There is no provision in the Corporation Code of the Philippines[16] that requires that the minutes of the meeting should be signed by all the members of the board.

The proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary. Being the custodian of corporate records, the corporate secretary has

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[13] Black's Law Dictionary (Eighth Edition, 2004), p. 1337.

[14] Fletcher Cyclopedia Corporations (Permanent Edition), Vol. 8, §4167, p. 625.

[15] *The Corporation Code of the Philippines Annotated* (1994) by Rosario N. Lopez, Vol. 2, p. 871.

[16] *Batas Pambansa Blg. 68* which took effect on 1 May 1980.

the duty to record and prepare the minutes of the meeting. The signature of the corporate secretary gives the minutes of the meeting probative value and credibility.[17] In this case, Antonio Eduardo B. Nachura,[18] Deputy Corporate Secretary, recorded, prepared and certified the correctness of the minutes of the meeting of 23 April 1982; and the same was confirmed by Leonilo M. Ocampo, Chairman of the GSIS Board of Trustees. Said minutes contained the statement that the board approved the sale of the properties, subject matter of this case, to respondent La'o.

The minutes of the meeting of 23 April 1982 were prepared by the Deputy Corporate Secretary of the GSIS Board of Trustees. Having been made by a public officer, the minutes carry the presumption of regularity in the performance of his functions and duties. Moreover, the entries contained in the minutes are *prima facie* evidence of what actually took place during the meeting, pursuant to Section 44, Rule 130 of the Revised Rule on Evidence.[19] This being the case, the Sandiganbayan erred in dismissing the case, because there was evidence, at that time, when it dismissed the case against respondent Dumlao. The dismissal by the lower court of the case against respondent Dumlao was indeed premature. It should have given the prosecution the opportunity to fully present its case and to establish reasonable doubt on the alleged approval by the GSIS Board of Trustees of the lease-purchase of the GSIS properties.

Petitioner likewise faults the Sandiganbayan for archiving the case against respondent La'o, arguing that since he had

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[17] *Union of Supervisors (R.B.)-NATU v. Secretary of Labor*, 195 Phil. 691, 711 (1981).

[18] Now Associate Justice of the Supreme Court.

[19] Sec. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

already been arraigned, it should have ordered the prosecution to adduce evidence against him.

We agree. However, said issue has already been mooted by the death of respondent La'o.[20] The death of an accused prior to final judgment terminates his criminal as well as civil liability based solely thereon.[21] Accordingly, the case against respondent La'o was dismissed.[22]

In support of the dismissal of the case against him, respondent Dumlao contends that to give due course to the Ombudsman's petition would place him in double jeopardy, in violation of his constitutional rights. Respondent Dumlao asserts that all the elements of double jeopardy are present in the case at bar. Citing *Heirs of Tito Rillorta v. Firme*,[23] he added: "[A]ssuming *arguendo* that the Sandiganbayan committed an error, whatever error may have been committed by the Sandiganbayan was merely an error of judgment and not of jurisdiction. It did not affect the intrinsic validity of the decision. This is the kind of error that can no longer be rectified on appeal by the prosecution, no matter how obvious the error may be."

To raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.[24] The first jeopardy attaches only (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was convicted or acquitted, or the case

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[20] Certificate of Death of Emilio Gonzalez La'o; *rollo*, p. 335.

[21] *Republic v. Desierto*, G.R. No. 131966, 31 August 2005, 468 SCRA 458, 469.

[22] *Rollo*, pp. 338-339.

[23] G.R. No. 54904, 29 January 1988, 157 SCRA 518.

[24] *Dimayacyac v. Court of Appeals*, G.R. No. 136264, 28 May 2004, 430 SCRA 121, 129.

was dismissed or otherwise terminated without the express consent of the accused.[25]

We do not agree. In the instant case, double jeopardy has not yet set in. The first jeopardy has not yet attached. There is no question that four of the five elements of legal jeopardy are present. However, we find the last element – valid conviction, acquittal, dismissal or termination of the case – wanting. As previously discussed, the Sandiganbayan violated the prosecution's right to due process. The prosecution was deprived of its opportunity to prosecute its case and to prove the accused's culpability. The dismissal was made in a capricious and whimsical manner. The trial court dismissed the case on a ground not invoked by the respondent. The Sandiganbayan dismissed the case for insufficiency of evidence, while the ground invoked by the respondent was that *the facts charged did not constitute an offense*. The dismissal was clearly premature, because any dismissal based on insufficiency of evidence may only be made after the prosecution rests its case and not at any time before then.[26] A purely capricious dismissal of an information deprives the State of a fair opportunity to prosecute and convict. It denies the prosecution a day in court. It is void and cannot be the basis of double jeopardy.[27]

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Where the denial of the fundamental right to due process is apparent, a decision in disregard of the right is void for lack of jurisdiction.[28] In the instant case, there was **no error of judgment but a denial of due process resulting in loss of jurisdiction**. Respondent Dumlao would not be placed in double

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[25] *Benares v. Lim*, G.R. No. 173421, 14 December 2006, 511 SCRA 100, 107.

[26] Section 23, Rule 119, Revised Rules of Criminal Procedure.

[27] *People v. Gomez*, 126 Phil. 640, 645 (1967).

[28] *People v. Bocar*, G.R. No. L-27935, 16 August 1985, 138 SCRA 166, 171.

jeopardy because, from the very beginning, the Sandiganbayan had acted without jurisdiction. Precisely, any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist.[29] Otherwise put, the dismissal of the case below was invalid for lack of a fundamental prerequisite, that is, due process. In rendering the judgment of dismissal, the trial court acted without or in excess of jurisdiction, for a judgment which is void for lack of due process is equivalent to excess or lack of jurisdiction.[30] This being the case, the prosecution is allowed to appeal because it was not given its day in court.

As heretofore explained, the Sandiganbayan gravely abused its discretion amounting to lack of jurisdiction when it dismissed the case against respondent Dumlao based only on the stipulations made by the parties during pre-trial. The erroneous equation of the number of members who signed the minutes of the meeting with the number of members who approved the alleged resolution necessarily led to the Sandiganbayan's faulty conclusion that there was no evidence showing that the GSIS Board of Trustees approved the alleged Lease-Purchase Agreement. As we have said, the minutes issued by the Deputy Corporate Secretary were enough, at that time, to set the case for trial and to allow the prosecution to prove its case and to present all its witnesses and evidence.

Respondent Dumlao claims that the GSIS has not been prejudiced because it still owns the properties subject matter of this case. This Court cannot rule on this claim, the same being a factual issue and a defense he is raising. The appreciation of this claim is not proper in this forum and is better left to the trial court, since the Supreme Court is not a trier of facts.[31]

Respondent Dumlao maintains he was charged with conspiring with the other GSIS Board Members in approving the Lease-

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[29] *People v. Velasco*, 394 Phil. 517, 559 (2000).

[30] *Merciales v. Court of Appeals*, 429 Phil. 70, 81 (2002).

[31] *Francisco, Jr. v. Fernando*, G.R. No. 166501, 16 November 2006, 507 SCRA 173, 179.

Purchase Agreement. However, of the seven members, two died, two were acquitted and the other two were not charged. He was left alone. He argues that since a conspiracy requires two or more persons agreeing to commit a crime, he can no longer be charged because he was left alone to face a charge of conspiracy.

His assumption that he can no longer be charged because he was left alone — since the co-conspirators have either died, have been acquitted or were not charged — is wrong. A conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.[32] In the case at bar, the absence or presence of conspiracy is again factual in nature and involves evidentiary matters. The same is better left ventilated before the trial court during trial, where the parties can adduce evidence to prove or disprove its presence.

Lastly, respondent Dumlao submits that his prosecution, to the exclusion of others, constitutes unfair discrimination and violates his constitutional right to equal protection of the law. He says that the dismissal of the case against his co-accused Canlas and Clave were not appealed by the prosecution; and the two government officials who signed the Lease-Purchase Agreement, and the two other members (Ocampo and Morales) of the GSIS Board of Trustees who signed the minutes were not charged.

We are not convinced that respondent Dumlao was unfairly discriminated against and his constitutional right to equal protection violated. It must be remembered that the manner in which the prosecution of the case is handled is within the sound discretion

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[32] Aquino, *The Revised Penal Code* (1997 Edition), Vol. 1, p. 125, citing *United States v. Remigio*, 37 Phil. 599, 612 (1918).

of the prosecutor, and the non-inclusion of other guilty persons is irrelevant to the case against the accused.[33] We find that there was no clear and intentional discrimination in charging respondent Dumlao. A discriminatory purpose is never presumed.[34] It must be remembered that it was not solely respondent who was charged, but also five of the seven board members. If, indeed, there were discrimination, respondent Dumlao alone could have been charged. But this was not the case. Further, the fact that the dismissal of the case against his co-accused Canlas and Clave was not appealed is not sufficient to cry discrimination. This is likewise true for the non-inclusion of the two government officials who signed the Lease-Purchase Agreement and the other two board members. Mere speculation, unsupported by convincing evidence, cannot establish discrimination on the part of the prosecution and the denial to respondent of the equal protection of the laws.

In *Santos v. People*,[35] citing *People v. Dela Piedra*,[36] the Court explained:

> The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not**

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[33] *People v. Nazareno,* 329 Phil. 16, 20-23 (1996).

[34] *People v. Dela Piedra,* 403 Phil. 31 (2001).

[35] G.R. No.173176, 26 August 2008.

[36] *Supra* note 34 at 54-56.

presumed, there must be a showing of "clear and intentional discrimination." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society** x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown. (Emphases ours.)

WHEREFORE, premises considered, the instant petition is *GRANTED*. The resolution of the Sandiganbayan in Criminal Case No. 16699 dated 14 July 2005 granting the Motion to Dismiss/Quash of respondent Hermenegildo C. Dumlao, is hereby *REVERSED* and *SET ASIDE*. The Sandiganbayan is forthwith

DIRECTED to set the case for the reception of evidence for the prosecution.

As to respondent Emilio G. La'o, on account of his demise, the case against him is *DISMISSED*.

SO ORDERED.

Carpio[*] and *Peralta, JJ.,* concur.

Quisumbing,[**] *J.,* dissents. Accused's motion is meritorious. GSIS reso. invalid, no cause of action here.

Puno,[**] *C.J.,* no part due to acquaintance with party.

THIRD DIVISION

[G.R. No. 184343. March 2, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS DOMINGO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; A PERSON ACCUSED OF A CRIME WHO PLEADS THE EXEMPTING CIRCUMSTANCE OF INSANITY

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[*] Per Special Order No. 568 dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

[**] Per Special Order No. 564 dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

[***] Per raffle dated 23 February 2009, Chief Justice Reynato S. Puno was designated to sit as an additional member in place of Associate Justice Antonio Eduardo B. Nachura.

HAS THE BURDEN OF PROVING BEYOND REASONABLE DOUBT THAT HE WAS INSANE IMMEDIATELY BEFORE OR AT THE MOMENT THE CRIME WAS COMMITTED. — The law presumes every man to be of sound mind. Otherwise stated, the law presumes that all acts are voluntary, and that it is improper to presume that acts are done unconsciously. Thus, a person accused of a crime who pleads the exempting circumstance of insanity has the burden of proving beyond reasonable doubt that he or she was insane immediately before or at the moment the crime was committed.

2. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; INSANITY; WHEN PRESENT. — Insanity exists when there is a complete deprivation of intelligence while committing the act; *i.e.*, when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will. Mere abnormality of the mental faculties is not enough, especially if the offender has not lost consciousness of his acts. Insanity is evinced by a deranged and perverted condition of the mental faculties and is manifested in language and conduct. An insane person has no full and clear understanding of the nature and consequences of his or her acts. x x x Insanity may be shown by the surrounding circumstances fairly throwing light on the subject, such as evidence of the allegedly deranged person's general conduct and appearance, his conduct consistent with his previous character and habits, his irrational acts and beliefs, as well as his improvident bargains.

3. ID.; ID.; ID.; MERE ABNORMALITY OF MENTAL FACULTIES WILL NOT EXCLUDE IMPUTABILITY. — [S]leeplessness, lack of appetite, nervousness and x x x hearing imaginary voices, while suggestive of an abnormal mental condition, cannot be equated with a total deprivation of will or an absence of the power to discern. Mere abnormality of mental faculties will not exclude imputability. The popular conception of the word "crazy" is used to describe a person or an act unnatural or out of ordinary. Testimony that a person acted in a crazy or deranged manner days before the commission of the crime does not conclusively prove that he is legally insane and will not grant him or her absolution.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT. – It is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. This Court does not generally disturb the findings of fact of the trial court because it is in a better position to examine real evidence, as well as to observe the demeanor of witnesses while testifying on the stand. Unless there is a clear showing that it overlooked certain facts and circumstances that might alter the result of the case, the findings of fact made by the trial court will be respected and even accorded finality by this Court.

5. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; INSANITY; THE ALLEGED INSANITY OF AN ACCUSED SHOULD RELATE TO THE PERIOD IMMEDIATELY BEFORE OR AT THE VERY MOMENT THE FELONY IS COMMITTED, NOT AT ANY TIME THEREAFTER. — The alleged insanity of an accused should relate to the period immediately before or at the very moment the felony is committed, not at any time thereafter. Medical findings of mental disorder, referring to a period after the time the crime was committed, will not exempt him from criminal liability.

6. CIVIL LAW; DAMAGES; DAMAGES TO BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME. — When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

7. ID.; ID.; CIVIL INDEMNITY; MANDATORY AND GRANTED WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME. — Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is in order. Thus, ₱50,000.00 is awarded to the heirs of Marvin Indon and ₱50,000.00 to the heirs of Melissa Indon.

8. ID.; ID.; ACTUAL DAMAGES; COMPETENT PROOF IS REQUIRED TO JUSTIFY AN AWARD THEREFOR. — The

party seeking actual damages must produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.

9. ID.; ID.; TEMPERATE DAMAGES; THE AWARD OF ₱25,000.00 IN TEMPERATE DAMAGES FOR HOMICIDE AND MURDER CASES IS PROPER WHEN NO EVIDENCE OF BURIAL OR FUNERAL EXPENSES IS PRESENTED IN THE TRIAL COURT. — The funeral expenses, to which Raquel Indon referred in her testimony, were not supported by receipts. Nevertheless, the award of ₱25,000.00 in temperate damages for homicide or murder cases is proper when no evidence of burial or funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Thus, the heirs of Marvin Indon and Melissa Indon are entitled to temperate damages of ₱25,000.00 for each death.

10. ID.; ID.; MORAL DAMAGES; IN CASES OF MURDER AND HOMICIDE, THE AWARD OF MORAL DAMAGES IS MANDATORY, WITHOUT NEED OF ALLEGATION AND PROOF OTHER THAN THE DEATH OF THE VICTIM. — In cases of murder and homicide, the award of moral damages is mandatory, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages is in order for the death for Marvin Indon, and likewise for that of Melissa Indon.

11. ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN THE KILLING IS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY; CASE AT BAR. — Exemplary damages of ₱25,000.00 should also be awarded, since the qualifying circumstance of treachery was firmly established. Marvin Indon and Melissa Indon were both minors when they were killed by the appellant. The killing by an adult of a minor child is treacherous. Moreover, the victims in this case were asleep when appellant barged into their house and attacked their family. The attack was clearly unprovoked, and they were defenseless against him.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

Appellant Jesus Domingo assails the Decision[1] of the Court of Appeals dated 30 April 2008 in CA-G.R. CR No. 30511, modifying the Decision[2] dated 13 November 2006 of Branch 13 of the Regional Trial Court (RTC) of Malolos, Bulacan. The Court of Appeals found appellant guilty beyond reasonable doubt of murder in Criminal Cases No. 1496-M-2000 and No. 1497-M-2000, attempted murder in Criminal Cases No. 1498-M-2000 and No. 1501-M-2000, frustrated murder in Criminal Case No. 1500-M-2000, and frustrated homicide in Criminal Case No. 1499-M-2000.

On 7 March 2003, six Informations[3] were filed before the RTC charging appellant with the following offenses:

Criminal Case No. 1496-M-2000 for Murder

"That on or about the 29th day of March 2000, in the municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife and screw driver and with intent to kill one Marvin G. Indon, with evident premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, stab and hit with the kitchen knife and screw driver said Marvin G. Indon, hitting him on his body thereby inflicting thereon mortal wounds which directly caused his death."

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[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 2-25.

[2] Penned by Presiding Judge Andres B. Soriano; CA *rollo*, pp. 11-23.

[3] CA *rollo*, pp. 11-13.

Criminal Case No. 1497-M-2000 for Murder

"That on or about the 29th day of March 2000, in the municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife and screw driver and with intent to kill one Melissa G. Indon, with evident premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, stab and hit with the kitchen knife and screw driver said Melissa G. Indon, hitting her on different parts of her body thereby inflicting thereon mortal wounds which directly caused her death."

Criminal Case No. 1498-M-2000 for Frustrated Murder

"That on or about the 29th day of March 2000, in the municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with kitchen knife and screw driver, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery attack, assault and hit with the said screw driver one Michelle G. Indon, a minor of 9 years old, hitting her on her back and buttocks, thereby inflicting on her serious physical injuries which ordinarily would have caused the death of the said Michelle G. Indon, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, this is, by the timely and able medical assistance rendered to said Michelle G. Indon."

Criminal Case No. 1499-M-2000 for Frustrated Murder

"That on or about the 29th day of March 2000, in the municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife and screw driver, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault, stab and hit with the said kitchen knife and screw driver one Ronaldo Galvez, hitting him on different part of his body, thereby inflicting on him serious physical injuries which ordinarily would have caused the death of Ronaldo Galvez, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by

reason of causes independent of his will, that is, by the timely and able medical assistance rendered to said Ronaldo Galvez."

Criminal Case No. 1500-M-2000 for Frustrated Murder

"That on or about the 29th day of March 2000, in the municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife and screw driver, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault, stab and hit with the said kitchen knife and screw driver one Raquel Gatpandan Indon, hitting her on the different parts of her body, thereby inflicting on her serious physical injuries which ordinarily would have caused the death of the said Raquel Gatpandan Indon, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to said Raquel Gatpandan Indon."

Criminal Case No. 1501-M-2000 for Attempted Murder

"That on or about the 29th day of March 2000, in the municipality of San Rafael, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kettle and with intent to kill one Jeffer G. Indon, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, commence the commission of murder directly by overt acts, that is by attacking, assaulting, and hitting the said Jeffer G. Indon, a 2 year old boy, with the kettle, hitting the latter on his head, thereby inflicting upon him physical injuries and if the accused was not able to accomplish his purpose, that is to kill the said Jeffer G. Indon, it was not because of his voluntary desistance but due to the timely intervention of third persons."

On 7 September 2000, appellant, with the assistance of counsel, was arraigned and he entered separate pleas of "Not Guilty" to the crimes charged. Thereafter, pre-trial conference was held, and trial ensued accordingly.[4]

Evidence for the prosecution consisted of the testimonies of complainants Raquel Indon, Jeffer Indon, and Michelle Indon;

[4] *Id.* at 13.

Dr. Jacinto Caluag; Police Officer (PO) 3 Asher Villegas and PO2 Rogelio Santos.

Complainant Raquel Indon testified that between 1:00 a.m. and 2:00 a.m. of 29 March 2000, she and her minor children Melissa, Michelle, Marvin and Jeffer were sleeping inside their house in Caingin, San Rafael, Bulacan, when she was awakened by the sound of appellant kicking their door open. Raquel narrated that she immediately recognized the accused, since the kitchen light illuminated his face. Armed with a screwdriver and a kitchen knife, appellant cut the cord of the mosquito net and repeatedly stabbed her, using the six-inch screwdriver, and hit her right arm three times. She screamed and was heard by her sister-in-law, whose house was contiguous to theirs. When her sister-in-law asked her for the identity of the assailant, she immediately identified herein appellant as "Doser," a name by which he is known in the community. Appellant was angered by her reply and said, "*Anong* Doser?" and thereafter pulled a kitchen knife from his right side and stabbed her on the stomach. When she tried to escape from the room, four-year-old Marvin rushed towards her. She then grabbed him and ran towards the gate. However, before reaching the gate, she fell down and appellant stabbed her right leg. The appellant then proceeded to stab Marvin, hitting the latter twice on the arm and twice on his left chest. Marvin died on 3 April 2000 as a result of these injuries. After stabbing Marvin, appellant returned back to the house, towards Raquel's two daughters Michelle and Melissa. When Raquel pleaded that the appellant spare her daughters' lives, he retorted: "*Ngayon pa, nagawa ko na.*" Melissa died because of the stab wounds that the appellant inflicted on her; while Michelle, who was able to hide under the *papag* merely sustained serious physical injuries. The appellant also attacked two-year-old Jeffer by striking him on the head with the screwdriver, but the latter managed to run to the house of Raquel's sister-in-law. Raquel got up and ran for help, but the appellant followed her. Their neighbor, Ronaldo Galvez, came to their rescue and tried to subdue the appellant. Raquel, thereafter, lost consciousness. She also relayed that she was later informed that a struggle ensued between appellant and Galvez. Appellant

inflicted wounds on Galvez's upper left chest and arms, after which Galvez was able to hit appellant with a piece of wood, which rendered the latter unconscious. Raquel, Melissa, Marvin, Jeffer, Galvez and the appellant were taken to the hospital.[5]

Raquel also testified that she spent ₱15,000.00 for the casket of Melissa Indon, ₱27,000.00 for the burial expenses of Melissa Indon and Marvin Indon, and approximately ₱30,000.00 for the food served during their wake. She also stated that because of her stab wounds, she spent ₱90,000.00 for hospitalization expenses and medicines. However, the receipts were lost except those issued by Sagrada Familia Hospital and Bulacan Provincial Hospital.[6]

Jeffer Indon, who was five years old at the time he testified, stated that the scar on his forehead was the result of the stab wound inflicted by Doser. However, on cross-examination, he admitted that he did not know who stabbed him.[7]

Michelle Indon identified the appellant as the man who stabbed her mother, her brother Marvin and her sister Melissa. She testified that the appellant stabbed her in the back once. Thereafter, she hid under the *papag*. She related that she did not go to the hospital anymore, because a certain *Nanang* Ella had already seen to her stab wound.[8]

Dr. Jacinto Caluag stated under oath that he treated Raquel Indon for multiple stab wounds. He testified that he also assisted in the operation on Raquel to repair her liver and gallbladder, which were damaged. He also disclosed that Raquel would have gone into shock and died had she not been given medical attention.[9]

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[5] TSN, 1 March 2001, pp 3-14; and TSN, 5 April 2001, pp. 2-12.

[6] TSN, 7 June 2001, pp. 3-5.

[7] TSN, 20 June 2002, pp. 2-4.

[8] TSN, 5 September 2002, pp. 3-13.

[9] TSN, 25 January 2001, pp. 3-9.

Police officers Asher Villegas and Rogelio Santos testified that they proceeded to the scene of the crime after the neighbors of the complainant reported the incident. When they arrived at the crime scene, appellant was already tied up. They took pictures of the victims, while the kitchen knife and the screwdriver allegedly used by the appellant were turned over to Police Officer Villegas. The complainants and the appellant were then brought to the hospital. They recorded the incident in the Police Blotter and prepared the statements of the witnesses. After the accused was treated for injuries, he was brought to the police station and detained. When asked why he committed the crime, accused denied knowledge of what happened.[10]

In an Order dated 10 July 2003, the trial court ordered that Ronaldo Galvez's testimony during his direct examination be stricken off the records due to his absences on the days he was scheduled to be cross-examined.[11]

The documentary evidence offered by the prosecution included the following: (1) the sketches of Raquel Indon's house, to prove that the light from the kitchen allowed her to identify the appellant, marked as Exhibits "A to A-6"; (2) the Death Certificate of Marvin Indon marked as Exhibit "D"; (3) the Medico-Legal Certificates of Raquel Indon, Marvin Indon, Jeffer Indon, and Ronaldo Galvez marked as Exhibits "E", "F", "H", and "L", respectively; (4) the Birth Certificates of Marvin Indon and Michelle Indon marked as Exhibits "B" and "N"; (5) pictures of Melissa Indon's lifeless body marked as Exhibits "G" and "O"; (6) Sworn Statements of Ronaldo Galvez and Michelle Indon marked as Exhibits "K" and "M"; (7) Statement of Account of the Medical Expenses incurred by Raquel Indon, issued by Sagrada Familia Hospital in the amount of ₱38,500.00, marked as Exhibit "I"; and (8) Statement of Account of the Medical Expenses incurred by Raquel Indon, issued by the Bulacan Provincial Hospital, in the amount of ₱7,843.00, marked as Exhibit "J".[12]

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[10] TSN, 18 September 2003, pp. 2-10 and TSN, 20 November 2003, pp. 4-12.

[11] Records, p. 97.

[12] *Id.* at 129-147.

In his defense, appellant testified that prior to the incident, he was in good terms with the Indon family and that he had no record of mental illness. However on 20 March 2000, he went to East Avenue Medical Center for a medical check-up, and he was advised to have an operation. He suffered from sleeplessness, lack of appetite, and nervousness. Occasionally, a voice would tell him to kill. He averred that when he regained his memory, one week had already passed since the incidents, and he was already detained. He only came to know of the incidents from his sister and his children who visited him. On cross-examination he admitted that when he regained his memory, he did not even ask the police officers why he was incarcerated.[13]

Dr. Regienald Afroilan, a witness for the defense, also testified that appellant was first brought to the National Center for Mental Health (Center) in August 2004 for a psychiatric evaluation, psychological examination and final testing to determine if he could stand trial. Dr. Afroilan stated that based on his evaluation, appellant suffered from Schizophrenia, a mental disorder characterized by the presence of delusions and or hallucinations, disorganized speech and behavior, poor impulse control and low frustration tolerance. He could not find out when the appellant started to suffer this illness, but the symptoms of Schizophrenia which were manifested by the patient indicated that he suffered from the illness six months before the Center examined the appellant. On cross-examination, he clarified that the evaluation finding that appellant suffered from Schizophrenia covered the period when the appellant submitted himself to examination.[14]

In a Decision dated 13 November 2006, the RTC decreed that the appellant was guilty beyond reasonable doubt of homicide in Criminal Cases No. 1496-M-00 and No. 1497-M-00, frustrated homicide in Criminal Cases No. 1499-M-00 and No. 1500-M-00, and attempted homicide in Criminal Cases No. 1498-M-00 and No. 1501-M-00. The RTC gave credence to the principal

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[13] TSN, 22 July 2004, pp. 2-14; TSN, 6 June 2005, pp. 2-5; TSN, 21 September 2005, pp. 2-9; 17 October 2005, pp. 3-12.

[14] TSN, 3 April 2006, pp. 3-11.

eyewitness, Raquel Indon, whose testimony was corroborated by Michelle Indon, regarding appellant's attack on 29 March 2000. The trial court found the appellant's defense of insanity unmeritorious, since what was presented was proof of appellant's mental disorder that existed five years after the incident, but not at the time the crimes were committed. The RTC also considered it crucial that appellant had the presence of mind to respond to Raquel Indon's pleas that her daughters be spared by saying, "*Ngayon pa, nagawa ko na*." It also noted that based on the psychiatrist's findings, the appellant was competent to stand trial. However, the trial court declared that there were no qualifying circumstances to support the charges of Murder, Frustrated Murder or Attempted Murder.[15] The dispositive part of the Decision dated 13 November 2006 reads:

WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of:

a) In Crim. Case No. 1496-M-00, Homicide, for the death of Marvin G. Indon, minor and hereby sentences him to suffer the indeterminate penalty of seven (7) years of *prision mayor* as minimum to thirteen (13) years of *reclusion temporal* as maximum; and to indemnify the heirs of the deceased in the amount of ₱75,000.00.

b) In Crim. Case No. 1497-M-00, Homicide, for the death of Melissa Indon, and hereby sentences him to suffer the indeterminate penalty of seven (7) years of *prision mayor* as minimum to thirteen (13) years of *reclusion temporal* as maximum; and to indemnify the heirs of the deceased in the amount of ₱75,000.00.

c) In Crim. Case No. 1498-M-00, Attempted Homicide, and hereby sentences him to suffer the indeterminate penalty of six (6) months of *aresto (sic) mayor* as minimum to five (5) years of *prision correccional* as maximum; and to indemnify the private complainant in the amount of ₱10,000.00.

d) In Crim. Case No. 1499-M-00, Frustrated Homicide, and hereby sentences him to suffer the indeterminate penalty of five (5) years of *prision correccional* as minimum to eight (8) years of *prision correccional* as maximum; and to indemnify the private complainant Ronaldo Galvez in the amount of ₱30,000.00.

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[15] CA *rollo*, pp. 13-14.

e) In Crim. Case No. 1500-M-00, Frustrated Homicide, and hereby sentences him to suffer the indeterminate penalty of five (5) years of *prision correccional* as minimum to eight (8) years of *prision correccional* as maximum; and to indemnify the private complainant Raquel Gatpandan Indon in the amount of ₱30,000.00. Likewise, accused is further directed to pay to the private complainant herein the sum of ₱90,000.00 to cover hospitalization and medical expenses; ₱42,000.00 to cover the casket and burial expenses for Melissa and Marvin, and ₱30,000.00 for food expenses, all by way of actual damages.

f) In Crim. Case No. 1501-M-00, Attempted Homicide, and hereby sentences him to suffer the indeterminate penalty of six (6) months of *aresto (sic) mayor* as minimum to five (5) years of *prision correccional* as maximum, and to indemnify the private complainant in the amount of ₱10,000.00.[16]

The appellant filed an appeal before the Court of Appeals docketed as CA-G.R. CR No. 30511, wherein he faulted the RTC for not taking note of the inconsistencies in Raquel Indon's testimony and for not giving due weight to his defense of insanity.[17] In a Decision dated 30 April 2008, the appellate court adjudged that Raquel Indon's testimony was credible, and that the inconsistency pointed out by appellant—whether or not Raquel was standing up or lying down when appellant stabbed her legs—referred to minor details. Moreover, insanity exempts the accused only when the finding of mental disorder refers to appellant's state of mind immediately before or at the very moment of the commission of the crime. This was not the case when appellant was first medically examined more than four years after the commission of the crimes. Appellant's response to Raquel Indon's pleas also proved that his faculties of reasoning were unimpaired at the time of the attack against Raquel's children.[18]

The Court of Appeals nevertheless modified the RTC's Decision dated 13 November 2006 and declared that the qualifying circumstance of treachery, which was alleged in the six

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[16] *Id.* at 22-23.

[17] *Id.* at 30-51.

[18] *Rollo*, pp. 2-18.

Informations along with evident pre-meditation, was adequately proven by the prosecution. Raquel Indon, Michelle Indon, Melissa Indon, Marvin Indon, and Jeffer Indon were merely sleeping inside their bedroom and had not even given the slightest provocation when appellant attacked them without warning. Furthermore, the killing of Marvin Indon and Melissa Indon, both minors who could not be expected to defend themselves against an adult, was considered treacherous, and would sustain a conviction for murder. The penalties imposed were adjusted accordingly. Appellant's conviction for frustrated homicide in Criminal Case No. 1499-M-2000 was affirmed, since prosecution failed to prove appellant's treachery or evident premeditation in his assault against Rolando Galvez, who came to the scene of the crime to subdue the appellant.[19]

The Court of Appeals also modified the trial court's award of damages. It reduced the civil indemnity of ₱75,000.00 awarded by the trial court, occasioned by the deaths of Marvin Indon and Melissa Indon, to ₱50,000.00 and awarded the heirs of each murder victim moral damages in the amount of ₱50,000.00. The awards for funeral expenses of ₱42,000.00 and food expenses of ₱30,000.00 were deleted by the appellate court for lack of sufficient evidence to support the same. The appellate court awarded Raquel Indon civil indemnity of ₱30,000.00 and moral damages of ₱25,000.00, but reduced the actual damages of ₱90,000.00 awarded by the RTC to ₱46,343.00, in accordance with the Statement of Accounts from Sagrada Familia Hospital and Bulacan Provincial Hospital. It affirmed the trial court's award for moral damages of ₱10,000.00 in favor of Michelle Indon and ₱10,000.00 in favor of Jeffer Indon. Moral damages of ₱25,000.00 were also awarded by the appellate court in favor of Ronaldo Galvez. [20]

In the Decision dated 30 April 2008, the *fallo* reads:

WHEREFORE, the appealed Decision dated November 13, 2006 of the trial court is modified as follows:

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[19] *Id.* at 19-22.

[20] *Id.*

1) In Criminal Case No. 1496-M-2000, accused-appellant Jesus Domingo is convicted of the crime of murder and sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the deceased Marvin Indon the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The trial court's award of funeral and food expenses of ₱42,000.00 and ₱30,000.00 respectively, are hereby deleted.

2) In Criminal Case No. 1497-M-2000, accused-appellant Jesus Domingo is convicted of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the deceased Melissa Indon the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

3) In Criminal Case No. 1498-M-2000, accused-appellant Jose Domingo is convicted of the crime of attempted murder and is sentenced to an indeterminate penalty of six (6) years of *prision correccional* maximum, as the minimum penalty, to ten (10) years of *prision mayor* medium, as the maximum penalty and to pay Michelle Indon ₱10,000.00 as moral damages.

4) In Criminal Case No. 1499-M-2000, accused-appellant Jose Domingo is convicted of the crime of frustrated homicide and is sentenced to an indeterminate penalty of five (5) years of *prision correccional* as minimum to eight (8) years of *prision mayor* as maximum and to pay Ronaldo Galvez ₱25,000.00 as moral damages.

5) In Criminal Case No. 1500-M-2000, accused-appellant Jose Domingo is convicted of the crime of frustrated murder and is sentenced to an indeterminate penalty of twelve (12) years of *prision mayor* maximum, as the minimum penalty, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as the maximum penalty and to pay Raquel Indon the amount of ₱30,000.00 as civil indemnity, ₱46,343.00 as actual damages and ₱25,000.00 as moral damages.

6) In Criminal Case No. 1501-M-2000, accused-appellant Jose Domingo is convicted of the crime of attempted murder and is sentenced to an indeterminate penalty of six (6) years of *prision correccional* maximum, as the minimum penalty, to ten (10) years of *prision mayor* medium, as the maximum penalty and to pay Jefferson (sic) Indon ₱10,000.00 as moral damages.[21]

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[21] *Id.* at 23-24.

Hence, the present petition where the appellant reiterates the assignment of errors that were raised before the Court of Appeals, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT; and

II

ASSUMING THAT THE ACCUSED-APPELLANT COMMITTED THE CRIMES CHARGED, THE TRIAL COURT GRAVELY ERRED IN NOT EXEMPTING HIM FROM CRIMINAL LIABILITY IN VIEW OF HIS INSANITY AT THE TIME OF THE COMMISSION OF THE SAME.[22]

This Court affirms the judgment of conviction.

The testimony of the principal witness of the prosecution, Raquel Indon, is assailed by appellant for not being credible due to an inconsistency in her testimony and a lack of conformity with the experience of ordinary men.

Appellant refers to Raquel's testimony during cross-examination wherein she narrated that after the appellant entered her bedroom, she screamed. Her sister-in-law, who lived next door, responded by asking Raquel who her assailant was, and the latter identified the appellant. Appellant claims that the conversation between Raquel and her sister-in-law was contrary to the ordinary course of things, and that the initial reaction of people in such a situation would be to ask for help from other people in order to save those who are in danger. Secondly, Raquel also testified during cross-examination that the appellant stabbed the front of her legs when she fell down. It is also argued that the appellant could not have stabbed the front of her legs, since she would be lying on front of her legs when she fell down.

This Court finds no merit in these arguments. To begin with, there was nothing out of the ordinary as regards Raquel's

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

testimony on these two matters. First, there was nothing unusual about the sister-in-law's query as to who was attacking Raquel. Considering that the exchange merely consisted of this question and the reply to it, it would not even be accurate to refer to it as a "conversation." Secondly, it was not impossible for the appellant to stab the front of Raquel's legs, had her legs been positioned sideways when she fell. But more importantly, these are peripheral details that do not affect the substantial aspects of the incident. Raquel clearly and positively testified that she was carrying her son Marvin when she rushed to the gate and fell down, and the appellant stabbed her legs and thereafter proceeded to stab Marvin who later died from the stab wounds. Her testimony was supported by the Medico-Legal Reports marked as Exhibits "E" and "F". Any inconsistencies in such peripheral details would not exculpate the appellant.

Appellant also asserts that he was insane or completely deprived of intelligence during the commission of the alleged crimes, and therefore should be exempted from criminal liability in accordance with Article 12, Chapter 2 of the Revised Penal Code.[23] However, this claim is not supported by evidence.

Appellant offers his uncorroborated testimony as the only proof that he was insane at the time he committed the crime. He testified that nine days before he committed the crime, he suffered from lack of appetite, sleeplessness, and anxiety. In addition, he allegedly heard voices ordering him to kill bad people. He claims that he does not remember anything that happened on 29 March 2000, when the crimes were committed, and that he was already detained when he became conscious of his surroundings.

The law presumes every man to be of sound mind. Otherwise stated, the law presumes that all acts are voluntary, and that it is improper to presume that acts are done unconsciously.

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[23] Circumstances which exempt from criminal liability.—The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

Thus, a person accused of a crime who pleads the exempting circumstance of insanity has the burden of proving beyond reasonable doubt that he or she was insane immediately before or at the moment the crime was committed.[24]

Insanity exists when there is a complete deprivation of intelligence while committing the act; *i.e.*, when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will. Mere abnormality of the mental faculties is not enough, especially if the offender has not lost consciousness of his acts. Insanity is evinced by a deranged and perverted condition of the mental faculties and is manifested in language and conduct. An insane person has no full and clear understanding of the nature and consequences of his or her acts.[25]

Even assuming that appellant's testimony is credible, his sleeplessness, lack of appetite, nervousness and his hearing imaginary voices, while suggestive of an abnormal mental condition, cannot be equated with a total deprivation of will or an absence of the power to discern. Mere abnormality of mental faculties will not exclude imputability. The popular conception of the word "crazy" is used to describe a person or an act unnatural or out of ordinary. Testimony that a person acted in a crazy or deranged manner days before the commission of the crime does not conclusively prove that he is legally insane and will not grant him or her absolution.[26]

Raquel Indon's narration of the events presents evidence that is more revealing of appellant's mental state at the time the crime was committed. Appellant's reply to her pleas that her daughters' lives be spared, "*Ngayon pa, nagawa ko na*,"

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[24] *People v. Robiños*, 432 Phil. 321, 329-330 (2002); *People v. Villa, Jr.*, 387 Phil. 155, 164-165 (2000); *People v. Bañez*, 361 Phil. 198, 212-213 (1999); *People v. Aldemita*, 229 Phil. 448, 455-456 (1986).

[25] *People v. Florendo*, 459 Phil. 470, 481 (2003); *People v. Villa, Jr.*, *id.* at 166.

[26] *People v. Florendo, id.*

was a positive sign that he was aware of what he was doing, and that his reasoning faculties were unimpaired.

The trial court found the testimony of Raquel Indon more credible than that of the accused, and its findings were affirmed by the Court of Appeals. It is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. This Court does not generally disturb the findings of fact of the trial court because it is in a better position to examine real evidence, as well as to observe the demeanor of witnesses while testifying on the stand. Unless there is a clear showing that it overlooked certain facts and circumstances that might alter the result of the case, the findings of fact made by the trial court will be respected and even accorded finality by this Court.[27]

It is also remarkable that appellant's testimony is not supported by his family's or intimate friends' accounts of his purported insanity. Appellant testified that he had been suffering from symptoms of insanity nine days before the incident. Insanity may be shown by the surrounding circumstances fairly throwing light on the subject, such as evidence of the allegedly deranged person's general conduct and appearance, his conduct consistent with his previous character and habits, his irrational acts and beliefs, as well as his improvident bargains.[28] It is difficult to believe that appellant's behavior, conduct and appearance, which would denote mental disturbance, escaped the notice of his family and friends.

Appellant draws attention to the results of the medical examination conducted by Dr. Regienald Afroilan in 2004, showing that he was suffering from Schizophrenia. It should be noted however that the examination was taken four years after the crimes were committed, and that Dr. Afroilan admitted that his findings did not include the mental state of petitioner

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[27] *People v. Villa, Jr., supra* note 24 at 166.

[28] *People v. Villa, Jr., id.* at 162; *People v. Florendo, supra* note 25 at 478; *People v. Madarang,* 387 Phil. 846, 859 (2000).

four years before. The alleged insanity of an accused should relate to the period immediately before or at the very moment the felony is committed, not at any time thereafter. Medical findings of mental disorder, referring to a period after the time the crime was committed, will not exempt him from criminal liability.[29]

Appellant emphasizes the fact that he was a friend of the Indon family and would not have committed such atrocities against them, unless he was totally deprived of reason. In *People v. Madarang*,[30] this Court ruled that the fact that the accused had no quarrel with his victim prior to the killing does not prove the unstable mental condition of the accused. Jurisprudence is replete with cases in which lives have been terminated for the flimsiest reasons.

This Court will now discuss the imposition of penalties and modify those imposed by the Court of Appeals. Appellant is guilty of Murder in Criminal Cases No. 1496-M-2000 and No. 1497-M-2000. The penalty for murder is *reclusion perpetua* to death. There being neither mitigating nor aggravating circumstances, the penalty for murder should be imposed in its medium period, or *reclusion perpetua*.[31] Thus, for the murder of Marvin Indon and Melissa Indon, the penalty imposed on appellant is two sentences of *reclusion perpetua*.

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[32]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the

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[29] *People v. Florendo*, *id.* at 480; *People v. Robiños*, *supra* note 24 at 333-334; *People v. Madarang*, *id.* at 861-862.

[30] *Id*.

[31] Revised Penal Code, Articles 64[1] and 248.

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

crime.[33] Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is in order.[34] Thus, ₱50,000.00 is awarded to the heirs of Marvin Indon and ₱50,000.00 to the heirs of Melissa Indon.

The heirs of Marvin Indon and Melissa Indon are not entitled to actual damages, because said damages were not adequately proved. The party seeking actual damages must produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.[35] The funeral expenses, to which Raquel Indon referred in her testimony, were not supported by receipts. Nevertheless, the award of ₱25,000.00 in temperate damages for homicide or murder cases is proper when no evidence of burial or funeral expenses is presented in the trial court.[36] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[37] Thus, the heirs of Marvin Indon and Melissa Indon are entitled to temperate damages of ₱25,000.00 for each death.

In cases of murder and homicide, the award of moral damages is mandatory, without need of allegation and proof other than the death of the victim.[38] The award of ₱50,000.00 as moral damages is in order for the death for Marvin Indon, and likewise for that of Melissa Indon.

Exemplary damages of ₱25,000.00 should also be awarded, since the qualifying circumstance of treachery was firmly

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

[34] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400.

[35] *People v. Tubongbanua*, *supra* note 33 at 742; *People v. Jamiro*, 344 Phil. 700, 722 (1997).

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

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

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

established.[39] Marvin Indon and Melissa Indon were both minors when they were killed by the appellant. The killing by an adult of a minor child is treacherous.[40] Moreover, the victims in this case were asleep when appellant barged into their house and attacked their family. The attack was clearly unprovoked, and they were defenseless against him.

In Criminal Cases No. 1498-M-2000 and No. 1501-M-2000, appellant is guilty of the Attempted Murder of Michelle Indon and Jeffer Indon. The penalty for Attempted Murder is *prision correccional* maximum to *prision mayor* medium. Thus, the penalty imposed on the appellant is two sentences of six years of *prision correccional*, as minimum, to ten years of *prision mayor* medium, as maximum, for the attempted murder of Michelle Indon and Jeffer Indon. In addition to the moral damages of ₱10,000.00 for each victim, which the Court of Appeals imposed, appellant is also ordered to pay civil indemnity of ₱20,000.00[41] and exemplary damages of ₱25,000.00.[42]

In Criminal Case No. 1499-M-2000, appellant is convicted of the crime of frustrated homicide of Ronaldo Galvez. The penalty for frustrated homicide, there being no other mitigating or aggravating circumstances attending the same, is five years of *prision correccional* as minimum to eight years and one day of *prision mayor* as maximum. Moral damages in the amount of ₱25,000.00, awarded by the Court of Appeals, are affirmed.

Appellant is guilty of Frustrated Murder in Criminal Case No. 1500-M-2000. The penalty for Frustrated Murder is *reclusion temporal*, which must be imposed in its medium period, considering that there were neither aggravating nor mitigating circumstances that were proven in this case. Applying the Indeterminate Sentence Law, appellant should be sentenced to suffer the penalty of twelve years of *prision mayor*, as

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[39] *People v. Beltran, Jr., supra* note 32 at 740.

[40] *People v. Cruz*, 429 Phil. 511, 520 (2002).

[41] *People v. Castillo*, 426 Phil. 752, 769 (2002).

[42] *People v. Beltran, Jr., supra* note 32.

minimum, to seventeen years and four months of *reclusion temporal* medium, as the maximum penalty. This Court affirms the award by the Court of Appeals of (1) Civil Indemnity in the amount of ₱30,000.00;[43] (2) actual damages of ₱46,343.00 for medical expenses, which are supported by receipts marked as Exhibits "I" and "J"; and (3) moral damages of ₱25,000.00. Appellant is also ordered to pay exemplary damages of ₱25,000.00 based on the finding that the assault against Raquel Indon was attended by treachery.[44] The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[45] At the time Raquel was attacked, she was in her home, unarmed and sleeping with her children. She was undoubtedly unprepared and defenseless to resist appellant's attack on her and her young children.

All the sums of money awarded to the victims and their heirs will accrue a 6% interest from the time of this Decision until fully paid.

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 30 April 2008 in CA-G.R. CR No. 30511 is *MODIFIED* in accordance with the hereinabove discussion on penalties and award of damages, to wit:

1. In Criminal Case No. 1496-M-2000, this Court additionally awards ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages to the heirs of Marvin Indon.

2. In Criminal Case No. 1497-M-2000, this Court additionally awards ₱25,000.00 as temperate damages

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[43] *People v. Dela Cruz*, G.R. No. 171272, 7 June 2007, 523 SCRA 433, 455.

[44] *People v. Beltran, Jr.*, *supra* note 32.

[45] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

and ₱25,000.00 as exemplary damages to the heirs of Melissa Indon.

3. In Criminal Case No. 1498-M-2000, the Court additionally awards civil indemnity of ₱20,000.00 and exemplary damages of ₱25,000.00 to Michelle Indon.

4. In Criminal Case No. 1499-M-2000, the appellant is sentenced to serve an indeterminate penalty of five years of *prision correccional* as minimum to eight years and one day of *prision mayor* as maximum.

5. In Criminal Case No. 1500-M-2000, this Court additionally awards exemplary damages of ₱25,000.00 to Raquel Indon.

6. In Criminal Case No. 1501-M-2000, this Court additionally awards civil indemnity of ₱20,000.00 and exemplary damages of ₱25,000.00 to Jeffer Indon.

No costs.

SO ORDERED.

Quisumbing,[*] *Carpio,*[**] *Carpio Morales (Acting Chairperson)* ,[***] and *Nachura, JJ.*, concur.

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[*] Associate Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 23 February 2009.

[**] Per Special Order No. 568 dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

[***] Per Special Order No. 578 dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago who is on official leave under the Court's Wellness Program.

SECOND DIVISION

[A.M. No. 06-3-112 MeTC. March 4, 2009]

RE: CASES LEFT UNDECIDED BY FORMER JUDGE RALPH S. LEE, MeTC, BRANCH 38, QUEZON CITY, and REQUEST OF NOW ACTING JUDGE CATHERINE D. MANODON, SAME COURT, FOR EXTENSION OF TIME TO DECIDE SAID CASES, *petitioner.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; FAILURE TO RESOLVE A CASE WITHIN THE REGLEMENTARY PERIOD RENDERS A JUDGE LIABLE FOR UNDUE DELAY IN RENDERING A DECISION OR ORDER; CASE AT BAR. — In its Memorandum, the OCA observed that the alleged "*commingling of records*" that Judge Lee gave as explanation could have been avoided if the judge had adopted an efficient system of record management. Several cases remained undecided beyond the reglementary period because no system was in place. This lapse, traceable to poor case management, is precisely what the reglementary periods address and renders Judge Lee liable for undue delay in the disposition of cases. As we held in *Aurora E. Balajedeong v. Judge Deogracias F. del Rosario, MCTC, Patnongon, Antique*, judges need to decide cases promptly and expeditiously because justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.

2. ID.; ID.; MISREPRESENTATION; A FORM OF DISHONESTY WHICH CARRIES A GRAVE IMPLICATION ON THE MEMBER OF THE JUDICIARY WHO COMMITTED IT. — The charge of misrepresentation, a form of dishonesty as the OCA puts it, for the purpose of ensuring a personal gain, carries a grave implication on the member of the judiciary who committed it. It forever stains the name of that member and makes him a pariah among those who learn of his dishonesty. His standing

with his peers, even with this Court, would particularly be affected.

3. REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; PENALTY. — Under Section 9(1), Rule 140 of the Rules of Court, as amended, and Section 11(b) of the same Rule, undue delay in rendering a decision or order constitutes a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00.

D E C I S I O N

BRION, *J.*:

We resolve the present administrative matter involving a judge who left several cases undecided when he assumed a higher position in the judiciary.

FACTUAL BACKGROUND

On May 2, 2006, this Court issued a Resolution[1] (a) granting the request of Acting Presiding Judge Catherine D. Manodon (*Judge Manodon*) of the Metropolitan Trial Court (*MeTC*), Branch 38, Quezon City for a 90- day extension within which to decide Criminal Case No. 84543 and forty-one (41) other cases submitted for decision during the incumbency of Judge Ralph S. Lee (*Judge Lee*) in the same court, (b) directing Judge Lee, now Presiding Judge of the Regional Trial Court (*RTC*), Branch 83, Quezon City, to explain (1) why he certified that he had no pending undecided cases at the time he assumed office as RTC judge, when in fact there were some cases submitted to him for decision and remained undecided beyond the reglementary period, (2) why he failed to decide the cases, (3) why the cases submitted for decision were not indicated in the Monthly Report of Cases submitted to the Office of the

[1] Issued by the Second Division.

Court Administrator (*OCA*); and (c) requiring Judge Manodon to furnish the Court, through the OCA, copies of her decision.

In another Resolution dated November 13, 2006, the Court, noting that Judge Manodon had decided several civil and criminal cases, granted her a second extension of ninety (90) days within which to decide the remaining cases. In still another Resolution dated June 13, 2007, the Court required Judge Lee to comply with the Resolution dated May 2, 2006 and to file the required explanation within a non-extendible period of fifteen (15) days from notice.[2]

Thereafter, Judge Lee filed a Manifestation dated July 12, 2007 where he informed the Court that he had already complied with the May 2, 2006 Resolution, with the submission of his Explanation dated June 20, 2006 to the Office of the Chief Justice on June 22, 2006.

Judge Lee explained that from January 4, 2006 to the present day, the MeTC, Branch 38 had no regular Branch Clerk of Court. Upon thorough perusal of the November 2005 monthly report, in consultation with Officer-in-Charge (*OIC*) Danver Buena of the same court, he discovered that thirty-one (31) cases should not have been reported as ripe for decision because the transcripts of stenographic notes (*TSN*) were incomplete; the documentary exhibits were either misplaced or lacked formal offer of exhibits from the parties; there were no orders declaring them submitted for decision; the parties failed to retake testimonies of witnesses either because of lack of TSN or because they were awaiting for developments from other related incidents.

Of the remaining eleven (11) cases, three (3) of those were reported by him in his August 2005 monthly report as submitted for decision with the notation that they remained undecided because the 90-day period had not yet fully lapsed; he could not decide them because he had been appointed RTC judge at the time and had already officially qualified. He provided close

[2] Issued by the First Division.

supervision to have the records/orders of the cases completed and the cases were subsequently decided by Judge Manodon.

Judge Lee attached to his explanation the affidavit of OIC Clerk of Court Danver Buena. In the affidavit, Buena alleged that some of the cases included in the inventory for November 2005 were inadvertently placed in the cabinets containing archived cases; the MeTC, Branch 38 staff had difficulty in monitoring the physical location of the case records because the court was handling more than two thousand (2,000) cases and had no adequate storage for those cases; after physical inspection of the records, they realized that the cases had incomplete TSNs or orders. Clearly, the eight (8) remaining cases could not have been reported earlier in the corresponding monthly reports as ripe for decision, since the records of those cases were "*inadvertently commingled with the archived cases*."

In a Resolution dated August 8, 2007,[3] the Court (a) noted Judge Lee's Manifestation of July 12, 2007 with his explanation, as required by the Court's Resolution dated May 2, 2006; and (b) referred Judge Lee's explanation to the OCA for evaluation, report and recommendation within thirty (30) days from receipt of the records.

The Report/Recommendation of the OCA

By way of a Memorandum/Report dated October 24, 2007,[4] the OCA found Judge Lee administratively liable for undue delay in deciding cases, submission of false monthly report, and misrepresentation. The OCA noted that Judge Lee's report for August 2005 contained a false or inaccurate entry. He indicated in the report that there were only three (3) undecided cases for August 2005, when in reality, there were eight (8) other cases which he failed to decide despite the expiration of the mandatory period of 90 days. The OCA found unacceptable Judge Lee's justification for the false report that the records of these cases "*were inadvertently commingled with the*

[3] Issued by the First Division.

[4] Submitted by Court Administrator Christopher O. Lock (retired).

archived cases." It opined that although the explanation was corroborated by OIC Clerk of Court Danver Buena, it cannot exonerate him from non-compliance with the constitutional mandate to dispose of the court's business promptly.

The OCA pointed out that paragraph 8 of Administrative Circular No. 4-2004, authorizes the withholding of salaries of judges and clerks of courts who are responsible for inaccurate entries in their monthly reports.[5] It opined, however, that because Judge Lee committed the more serious offense of misrepresentation, the mere withholding of his salary would not be commensurate with his transgression. Judge Lee's misrepresentation, the OCA found, occurred when he stated in his November 21, 2005 certification that he had no pending cases submitted for decision before the MeTC, Branch 38, Quezon City at the time of his assumption to office as RTC judge.[6] The OCA reasoned out that without the questioned certification, Judge Lee could not have assumed his new post pursuant to OCA Circular No. 90-2004 which requires "*a judge who applies for transfer to another branch or for a promotion shall submit to the Judicial and Bar Council a certification that he has no pending undecided cases submitted for decision at the time of filing of his application. In no case shall a promoted judge be allowed to take his oath of office and assume his new responsibilities unless and until he shall have issued another certification manifesting that he has decided or disposed of all cases assigned to him from his previous position*."

The OCA noted that misrepresentation, a form of dishonesty, is a serious charge under Section 8, Rule 140 of the Rules of Court.[7] Rule 140 prescribes the following penalties: dismissal from the service with the forfeiture of all or part of the judge's benefits coupled with disqualification; suspension from office

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[5] Revised Form, Guidelines and Instructions in Accomplishing the Monthly Report of Cases, issued on February 4, 2004.

[6] Issued in compliance with A.M. No. 04-5-19 SC dated June 8, 2004.

[7] Amended by SC Administrative Memorandum 01-8-10-2001.

without salary and other benefits for more than three (3) months, but not exceeding six (6) months; or a fine of more than ₱20,000.00, but not exceeding ₱40,000.00. Accordingly the OCA recommended the imposition of a fine in the amount of ₱40.000.00 on Judge Lee.

THE COURT'S RULING

We find Judge Ralph S. Lee liable for his failure to decide assigned cases within the period fixed by law.

The records clearly indicate that Judge Lee, who had just been promoted to the position of RTC judge, submitted a monthly report (for August 2005) containing grossly inaccurate entries, and a certification that he left no pending cases in MeTC, Branch 38 of Quezon City, when he assumed his new position in the RTC. The OCA Memorandum dated October 24, 2007 made special mention of 8 cases which Judge Lee failed to decide before he assumed the position of RTC Judge and which, more significantly, he failed to include in his monthly report for August 2005.

In its Memorandum, the OCA observed that the alleged "*commingling of records*" that Judge Lee gave as explanation could have been avoided if the judge had adopted an efficient system of record management. Several cases remained undecided beyond the reglementary period because no system was in place. This lapse, traceable to poor case management, is precisely what the reglementary periods address and renders Judge Lee liable for undue delay in the disposition of cases. As we held in *Aurora E. Balajedeong v. Judge Deogracias F. del Rosario, MCTC, Patnongon, Antique*,[8] judges need to decide cases promptly and expeditiously because justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.

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[8] A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13.

The more serious OCA finding is that Judge Lee committed a misrepresentation in certifying that he had no pending cases submitted for decision before the MeTC, Branch 38 at the time of his assumption to office as RTC judge.[9] By submitting the certification, the OCA concluded that Judge Lee intended to conceal the truth regarding the undecided cases to allow him to immediately assume his upgraded position of RTC judge. Indeed, this particular transgression of Judge Lee, if it were true, is a clear violation of the requirement that judges should possess *integrity* as they carry out their critical role as dispensers of justice in society.[10]

Is Judge Lee guilty of misrepresentation? The charge of misrepresentation, a form of dishonesty as the OCA puts it, for the purpose of ensuring a personal gain, carries a grave implication on the member of the judiciary who committed it. It forever stains the name of that member and makes him a pariah among those who learn of his dishonesty. His standing with his peers, even with this Court, would particularly be affected. For this reason, we examined the records carefully.

We hold, after due examination, that Judge Lee is answerable only for undue delay in deciding his assigned cases. We arrived at this conclusion by giving Judge Lee the benefit of the doubt on the charge that he falsified his monthly report to the OCA (for August 2005) when he reported that he had only three (3) cases which remained undecided when, in fact, there were eight (8). We likewise accorded him the same treatment on the charge that he deliberately misrepresented in his certification of November 21, 2005 that he had no pending cases submitted for decision before the MeTC, Branch 38 at the time he assumed office as RTC judge.

The doubt we entertained arose firstly from Judge Lee's explanation that the 8 cases were "*inadvertently commingled with the archived cases*," a claim that OIC Clerk of Court

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[9] *Supra* note 5, p. 4.

[10] New Code of Judicial Conduct for the Philippine Judiciary, Canon 2.

Buena corroborated.[11] We noted that even the OCA acknowledged the corroboration, although it still found this insufficient to exonerate "*from non-compliance with the constitutional mandate to dispose of the court's business promptly*." The OCA observed that Judge Lee "*should have managed the MeTC, Branch 38 with a view to the prompt and convenient disposition of its business*."[12] The second reason that made us pause was the lack of a permanent clerk of court and the physical condition of Judge Lee's branch, particularly the lack of storage facilities that easily could have caused the intermingling of files. Given these reasons, we find that what transpired was really more of a records management problem, thus negating or at least raising doubt on whether Judge Lee really had the intention to misrepresent.

With the eight (8) cases out of the way, we are left with the three (3) undecided cases mentioned in Judge Lee's report for August 2005. Judge Lee also explained the status of the three (3) cases. He indicated in his report that these cases had indeed been submitted for decision, but the 90-day period had not expired, and he could not decide the cases due to his promotion as RTC judge on August 23, 2005.[13] Judge Lee clarified that he accomplished the questioned certification in the honest belief that he had faithfully complied with his judicial responsibilities.[14] We find this explanation, made in apparent good faith, to be satisfactory.

In light of the foregoing, we find Judge Lee liable for undue delay in deciding the cases he left behind in the MeTC, Branch 38, Quezon City. Under Section 9(1), Rule 140 of the Rules of Court, as amended, and Section 11(b) of the same Rule, undue delay in rendering a decision or order constitutes a less serious charge punishable by suspension from office without salary

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[11] Annex "4", Judge Lee's Explanation dated June 20, 2006.

[12] OCA Memorandum, p. 3, par. 1.

[13] *Id.*, p. 3, last paragraph.

[14] Judge Lee's Explanation, p. 5.

and other benefits for not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00. In order not to adversely affect the work of the RTC, Br. 83, Quezon City where Judge Lee presides, we deem it appropriate to impose the maximum fine of ₱20,000.00 on Judge Lee considering that his transgression touched on parties' right to the speedy disposition of their cases and the fact that he is already a repeat offender. We note that, as reported by the OCA, he had been fined ₱5,000.00 for indirect contempt by the Court in an earlier administrative matter.[15]

WHEREFORE, premises considered, Judge *RALPH S. LEE* is hereby declared *LIABLE* for undue delay in deciding cases. Accordingly, he is *FINED* ₱20,000.00, with a *STERN WARNING* that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Nachura,[*] and *Peralta,*[**] *JJ.,* concur.

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[15] *Zenaida M. Limbona v. Judge Ralph S. Lee, RTC, Br. 83, Quezon City*, G.R. No. 173290, November 20, 2006, 507 SCRA 45.

[*] Designated additional member of the Second Division per Special Order No. 571 dated February 12, 2009.

[**] Designated additional member of the Second Division per Special Order No. 572 dated February 12, 2009.

EN BANC

[A.M. No. P-06-2148. March 4, 2009]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JINGKEY NOLASCO, Clerk of Court, Municipal Trial Court, San Jose, Antique,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; PERFORM A DELICATE FUNCTION AS DESIGNATED CUSTODIANS OF THE COURT'S FUNDS, RECORDS, PROPERTIES AND PREMISES. — Clerks of Court must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are responsible for ensuring that the court's funds are promptly deposited with an authorized government depository bank. They are thus liable for any loss, shortage, destruction or impairment of such funds and property.

2. ID.; ID.; ID.; ID.; DISHONESTY AND GRAVE MISCONDUCT; THE FAILURE TO REMIT FUNDS IN DUE TIME AND THE ACT OF MISAPPROPRIATING JUDICIARY FUNDS CONSTITUTE DISHONESTY AND GRAVE MISCONDUCT. — [N]o position demands greater moral righteousness and uprightness from the occupant than does the judicial office. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the judiciary. The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are punishable by dismissal from the service, even if committed for the first time.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT THEREOF BY THE INVESTIGATING JUDGE IN ADMINISTRATIVE CASES IS GENERALLY ACCORDED GREAT RESPECT, AND EVEN FINALITY. — [T]he function of evaluating the credibility of witnesses in administrative cases is primarily lodged in the investigating judge. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases where preponderance of evidence and proof beyond reasonable doubt, respectively, are required, applies *a fortiori* in administrative cases where the quantum of proof required is only substantial evidence. The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.

4. POLITICAL LAW; CONSTITUTIONAL LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; EVERY EMPLOYEE OF THE JUDICIARY SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS AND HONESTY. — Time and again, this Court has stressed that those charged with the dispensation of justice – from the presiding judge to the lowliest clerk – are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee of the judiciary should be an example of integrity, uprightness and honesty.

APPEARANCES OF COUNSEL

Del Rosario Benedicto Law Offices for respondent.

D E C I S I O N

***PER CURIAM*:**

This administrative matter arose from an examination conducted by the Commission on Audit (COA) on the cash and accounts of respondent Jingkey B. Nolasco, Clerk of Court II, Municipal Trial Court (MTC)-San Jose, Antique.

On March 21, 2005, the Fiscal Monitoring Division of the Court Management Office (FMD-CMO) received a letter from Judge Monina S. Misajon, Presiding Judge, MTC-San Jose, Antique, informing then Chief Justice Hilario G. Davide, Jr. of the initial results of a COA examination of the cash and accounts kept by Nolasco. The COA audit disclosed that as financial custodian of said court, Nolasco had undeposited collections in the amount of ₱563,683.35, and undocumented/unauthorized withdrawals from the Fiduciary Fund Account (FFA) amounting to ₱128,317.64.[1] Upon advice of the COA Audit Team, Judge Misajon relieved Nolasco of her duties as financial custodian on February 14, 2005 and designated Court Interpreter Arlyn Minguez in her stead.[2]

Acting on the reported financial irregularities in the MTC-San Jose, the Office of the Court Administrator (OCA) sent an audit team to conduct its own investigation on the matter. Relative to Nolasco's accountabilities, the audit team discovered that she incurred shortages in the following amounts:

Special Allowance for the Judiciary Fund (SAJF)	₱ 49,265.60
General Fund (GF)	3,187.00
Judiciary Development Fund (JDF)	113,428.04
Sheriff Trust Fund (STF)	7,000.00
Fiduciary Fund (FF)	614,999.95
GRAND TOTAL	787,880.59

With respect to the FFA, the audit team found that Nolasco had undeposited collections in the amount of ₱441,199.95, and unauthorized withdrawals specified as follows:[3]

Over Withdrawal of Cash Bonds:

	Court Or.					Amount	Over
Case No.	Date	Bondsman	OR No.	OR Date	Amount	Withdrawn	Withdrawal
6837	6/7/2002	Renita Gabo	7685287	9/10/99	6,000.00		
7774	6/7/2002	Daniel G. Rafil	14699310	5/27/00	3,000.00	30,000.00	21,000.00

[1] *Rollo*, p. 11.

[2] *Id*. at 12.

[3] *Id*. at 73.

6230	2/7/2003	Azuena Parreno	4987422	03/03/97	6,000.00		
5749	2/5/2003	Emilie Pelago	3853607	09/28/94	4,200.00		
6642	2/12/2003	Ricardo Britania	9128867	12/14/98	10,000.00		
7696	2/20/2004	Dina Hiponia	14699298	2/18/2002	10,000.00		
6983	2/12/2003	Marieta De Guzman	11807178	02/15/00	2,000.00	60,000.00	27,800.00
6934	8/12/2004	Lynlyn Ziga	12557461	6/22/04	6,000.00		
8322	8/19/2004	Ricky Gutierrez	16196862	3/12/04	10,000.00	44,000.00	28,000.00
8322	8/19/2004	Ricky Gutierrez	16196862	3/12/04	10,000.00	14,000.00	4,000.00
		Total			67,200.00	148,000.00	80,800.00

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Withdrawal Without Supporting Documents

Case No.	Bondsman	Date Withdrawn	Court Or.	Acknowledgment Receipt	Amount Withdrawn
		7/2/2004	x	X	60,000.00
7574	Rochie Gutierrez	1/31/2005	x	X	3,000.00
6717	Delia Noble	1/31/2005	x	X	2,000.00
	Total				65,000.00

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Withdrawal of Bail Bond not Deposited with SA NO-0771-0101-33

Case No.	Court Or. .Date	Bondsman	Court Or.	Date Withdrawn	Amount
7939	1/20/2003	Ma. Bella Lim	5611841	4/14/00	12,000.00
6238	3/24/2004	Raymundo Jungco	11307167	12/24/02	16,000.00
		Total			28,000.00

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The audit team further observed that the withdrawal slips and passbook indicating the foregoing withdrawals from the FFA, under Land Bank of the Philippines (LBP) Savings Account (SA) No. 0771-0107-33, were signed by Judge Misajon and countersigned by Nolasco.

On August 12, 2005, the OCA issued a Memorandum[4] directing Judge Misajon to explain why the foregoing withdrawals from the FFA were allowed. Likewise, the OCA directed respondent Nolasco to:

[4] *Id*. at 72.

A. EXPLAIN in writing why she should not be administratively charged with incurring the total initial shortage of SEVEN HUNDRED EIGHTY SEVEN THOUSAND EIGHT HUNDRED EIGHTY & 59/100 (₱787,880.59) x x x.

B. PAY/DEPOSIT the initial shortages in the SAJF, GF, JDF, STF and FF amounting to ₱49,265.60, ₱3,187.00, ₱113,428.04, ₱7,000.00 and ₱614,999.95 respectively and SUBMIT to the FMD-CMO the proof of remittance thereof.

C. EXPLAIN why withdrawals from the Fiduciary Fund were made:

1. In excess of the cash bond deposited;
2. Without the court orders/acknowledgment receipts; and
3. (Why some) Cash bonds (were) not deposited with SA No. 0771-0107-33.[5]

In compliance with the OCA directive, Nolasco sent an undated letter to then Court Administrator Presbitero J. Velasco, Jr., reporting on her efforts to restitute the shortages, thus:

With regards the Special Allowance for the Justices Fund (SAJF) as well as the General Fund (GF), I have already restituted the amount of ₱56,274.30. It was so because on the initial findings of the Commission on Audit-Region VI, there was a shortage of ₱45,342.30 for the SAJF and ₱9,748.00 for the STF, supposedly SGF or Sheriff's General Fund which is also remitted in the SAJF account which totals to ₱55,090.30 but lately Miss Bonifacia Lee informed me that my total shortage for the SAJF account amounted to ₱56,272.30 hence; an additional remittance was made. I could no longer deposit Your Honor, the amount of ₱3,187.00 for the General Fund (GF) in the account of the Treasurer of the Philippines considering that there was a Circular to remit the collections from the Treasurer of the Philippines to SAJF Fund, so I would humbly beg that the same be credited Your Honor since the total accountability I have as per findings of the Supreme Court Audit Team amounted to ₱52,452.60. As to Judiciary Development Fund (JDF), please find attached deposit slip as to the restitution of ₱73,910.40. Again, Your Honor, in the COA findings, I was short of ₱77,431.00 which prompted me to remit additional amount

[5] *Id*. at 1.

of ₱4,520.60. As to the interest income of ₱39,517.64, that need to be deposited with the JDF account, could it be possible Your Honor that the over remittance I have with the JDF account in the amount of ₱4,520.60 and SAJF account in the amount of ₱3,821.70 for a total sum of ₱8,342.30 be offset and/or deducted to the amount of ₱39,517.64 so that I will only remit ₱31,175.34 instead?

The Sheriff's Trust Fund (STF) Your Honor in the amount of ₱7,000.00 was received by Ms. Arlyn Minguez, Court Interpreter and Designated Financial Custodian from the undersigned on April 22, 2005 and the same was deposited on even date at the account of STF-MTC, San Jose, Antique.[6]

With regard to the undeposited collections in the FFA, Nolasco stated that, during a chamber conference held on May 4, 2005, she already admitted her failure to deposit collections amounting to more than ₱400,000.00 before then Deputy Court Administrator Zenaida Elepaño, Atty. Thelma Bahia and Judge Misajon. She expressed willingness to restitute the amount if given ample time.[7]

On the other hand, Nolasco explained the unauthorized withdrawals from the FFA, as follows:

As to OVERWITHDRAWALS, in the amount of ₱80,800.00, please be informed Your Honor that in the withdrawn amount of ₱30,000.00, the amount was withdrawn per instruction of Judge Ma. Monina S. Misajon, for that time she needed the money in going home to Cebu City, her native town to partition her properties. Indeed, I have knowledge and consented to said withdrawal even though I knew it was wrong since the authorized amount to be withdrawn is only ₱9,000.00, but I was ordered by her, who am I to refuse a judge, Your Honor? Nonetheless, the Supreme Court Audit Team must have noted that the amount of ₱21,000.00 excess of the authorized amount withdrawn, it was restituted on June 18, 2002 because even the COA-Regional Office findings would reveal that there was an over deposit of ₱21,000.00 for the year 2002. Vivid perusal of Annex 12 would show that said amount was deposited/restituted by Judge Misajon herself because the penmanship in the amount of ₱21,000.00 was hers,

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[6] *Id*. at 86.

[7] *Id*.

she let me sign the deposit slip that I was the depositor and place the total amount of ₱21,000.00 but it was her handwriting on the amount of 42 pieces of 500 bills and the figures ₱21,000.00 and she personally deposited the amount at Land Bank of the Philippines, San Jose, Antique branch. x x x

On the second amount of ₱60,000.00, Your Honor, the authorized amount to be withdrawn is only ₱32,200 for it represents the forfeited bonds to be deposited to the JDF Account but again, I extended another favor for Judge Misajon since she told me that she badly needed the money to be used for the cremation of her sister who died in Cebu City. x x x she paid me ₱32,200.00 on June 18, 2004 to be deposited to the JDF account for I told her, I need to make a report thereon. The remaining amount of ₱27,800 was never returned by her Your Honor.

In another withdrawal of ₱44,000.00, the authorized amount to be withdrawn is only ₱12,000.00 representing the cash bond of Ricky Gutierez and Consolita Veñegas in the amount of ₱6,000.00 each. The amount of ₱32,000.00 representing the cash bond of the Licanda family was withdrawn because their cases were dismissed by the Court but the prosecution filed an appeal to the Order of dismissal, hence, said amount should have been returned to the Fiduciary Fund, but I wasn't able to redeposit the same Your Honor for again, I used said amount. x x x In effect, the OVERWITHDRAWAL of cash bond in the amount of ₱80,800.00 should be reduced to ₱59,800 for that is the total amount not restituted Your Honor.[8]

Nolasco alleged that the ₱60,000.00 withdrawal on July 4, 2004 which the audit team found to be unsupported by any documents was again made at the instance of Judge Misajon. Even though she knew that the same was unauthorized, Nolasco consented to the withdrawal since it was her superior who asked her to do so. She also admitted that she had a personal interest in granting Judge Misajon's request because she was then aiming for a promotion and was courting the judge's favor. As for the other withdrawals without supporting documents amounting to ₱5,000.00, the same were actually covered by court orders and acknowledgment receipts which Nolasco attached as annexes to her letter.

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[8] *Id.* at 87; citations omitted.

With respect to the withdrawal of bail bonds not deposited in the FFA, Nolasco stated that the ₱16,000.00 cash bond in the Jungco case was withdrawn and turned over to the bondsman upon dismissal of the same by Judge Sylvia Jurao of Branch 10, RTC-San Jose, Antique. On the other hand, the cash bond in the amount of ₱12,000.00 in the Lim case was erroneously withdrawn together with the bond posted by the same accused in another case that was dismissed at the same time. At any rate, the amount is covered by an acknowledgment receipt issued by the accused-bondsman.[9]

Meanwhile, Judge Misajon explained in a letter[10] dated September 23, 2005, that she did not allow the unauthorized withdrawals and asserted that Nolasco schemed and deliberately withdrew the amounts to pay for her debts and maintain an affluent lifestyle. Judge Misajon surmised that the amounts in the withdrawal slips she signed must have been altered by Nolasco, as shown by an examination of the withdrawal slips. She asserted that she signed the withdrawal slips in good faith, as she had full trust and confidence in Nolasco.

In a Memorandum[11] dated January 16, 2006, the OCA recommended that the report be docketed as a regular administrative matter against Nolasco, and that the same be referred to Judge Rudy Castrojas for further investigation, report and recommendation, in view of the conflicting allegations of Judge Misajon and Nolasco.

On March 14, 2006, Judge Misajon wrote the OCA requesting that steps be taken by the Court to prevent Nolasco from leaving the country and evading her accountabilities.[12] On March 28, 2006, the Court thus issued a resolution immediately suspending Nolasco from office and ordering the issuance of a hold departure order against her.[13]

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[9] *Id*. at 88.

[10] *Id*. at 74-79.

[11] *Id*. at 12-21.

[12] *Id*. at 3.

[13] *Id*. at 27.

On June 5, 2007, the Court adopted the recommendation of the OCA and docketed the audit report as A.M. No. P-06-2148. The administrative matter was then referred to Judge Rudy Castrojas of Branch 12, RTC-San Jose, Antique, for further investigation.

In the meantime, Judge Misajon compulsorily retired from the service on June 12, 2007.

After conducting several hearings in which respondent Nolasco and Judge Misajon were allowed to testify and present their respective witnesses, Judge Castrojas terminated his investigation and submitted his report and recommendation[14] to this Court on October 30, 2007. The investigating judge found that there were three unauthorized withdrawals from the FFA that were allegedly made at the instance of Judge Misajon, thus:

1. The amount of ₱30,000.00 was withdrawn from the Fiduciary Fund on June 14, 2002, as shown by the withdrawal slip marked Exh. "A"–Misajon, and Exh. "1"–Nolasco.
2. ₱60,000.00 was also withdrawn from the same fund on June 11, 2004, evidenced by Exh. "C"–Misajon which is also Exh. "3"–Nolasco.
3. Another ₱60,000.00 was withdrawn on July 2, 2004, as reflected in a withdrawal slip marked Exh. "5"–Nolasco.
4. All the said withdrawal slips were signed by Judge Ma. Monina S. Misajon and Jingkey Nolasco.[15]

With regard to the first withdrawal on June 14, 2002, Nolasco claimed that only ₱9,000.00 was authorized to be withdrawn, but she nonetheless withdrew ₱30,000.00 because Judge Misajon allegedly borrowed ₱21,000.00 out of the said amount. To prove her allegation, Nolasco presented a deposit slip on which Judge Misajon supposedly wrote the figures "21,000.00" and "42", the latter being the number of five hundred peso bills which Judge Misajon personally deposited with the LBP as

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[14] *Id*. at 430-439.

[15] *Id*. at 435; citations omitted.

payment for the borrowed amount. Judge Misajon strongly denied that it was her handwriting appearing on the said deposit slip.

As for the withdrawals made on June 11, 2004 and July 2, 2004, Judge Misajon offered several theories to justify why she signed the withdrawal slips. First, she surmised that Nolasco probably added the letters "ty" to the word "six" and a "0" to "6,000.00" to make it appear that the amount to be withdrawn was ₱60,000.00 instead of only ₱6,000.00. It was also possible that Nolasco presented four copies of withdrawal slips for her signature, with two copies left blank. As Judge Misajon was always busy or under time constraint, Nolasco most likely took advantage of the situation and had her sign blank or incomplete forms. Finally, Judge Misajon speculated that Nolasco could have used withdrawal slips that were signed in connection with other criminal cases, but remained unused and kept by Nolasco for future fraudulent use.

For her part, Nolasco claimed that she withdrew the amount of ₱60,000.00 on June 11, 2004 after she was told by Judge Misajon that the latter needed money for the cremation of her sister who passed away in Cebu City. At that time, Nolasco had to withdraw ₱32,200.00 in forfeited cash bonds from the FFA and transfer the same to the Judiciary Development Fund (JDF) Account. Believing that Judge Misajon would need ₱60,000.00, Nolasco withdrew ₱60,000.00 and gave the entire amount to Judge Misajon. Since Nolasco had to make a report on the JDF Account by the end of the month, Judge Misajon returned the amount of ₱32,200.00 on June 18, 2004, but never returned the balance of ₱27,800.00.

As for the last withdrawal on July 4, 2004, Nolasco maintained that she withdrew ₱60,000.00 at Judge Misajon's behest, but she never knew what the judge did with the money.

Between the conflicting accounts of the parties regarding the unauthorized withdrawals from the FFA, the investigating judge gave more credence to the version of Nolasco. On the first withdrawal, Judge Castrojas made the following findings:

In order to be guided who between the two contending parties tell the truth on the issue, Judge Misajon was requested to write twice on a piece of paper the figure ₱21,000.00 x x x. It was observed that Judge Misajon tried to differ the figures she wrote from figure ₱21,000.00 appearing on the deposit slip dated June 18, 2002 x x x by not connecting the zeroes. This notwithstanding, it is noted that the way or manner the numbers "2", "1" and the last zeroes (0s) written by her on the piece of paper have distinct similarities on the "2", "1" and "0" in the ₱21,000.00 appearing on the deposit slip x x x.

It is observed that in one of the copies of the cash deposit slip x x x the lower end of figure 1 in the 21,000.00 allegedly written by Judge Misajon goes beyond the lower portion of figure 2. And, in the four 21,000.00 written by Judge Misajon during the investigation x x x three out of four numbers **one (1)** also exceed the lower portions of the three **twos (2s)**. Considering the marked similarities on how they were written, it appears that the contention of Jingkey Nolsaco (sic) that it was Judge Misajon who wrote the 21,000.00 in the deposit slips x x x and deposited the said amount with the Land Bank in payment for what she borrowed from the Fiduciary Fund on June 14, 2002, seems to be credible.

xxx xxx xxx

To strengthen her stand that she was not the one who wrote the figure 21,000.00 on the cash deposit slip x x x Judge Misajon testified that it was her staff, Caroline Magno, who wrote the same. Unfortunately for her, when Caroline Magno was called to testify, she (Magno) denied that the 21,000.00 was her handwriting.[16]

Judge Castrojas also observed that the withdrawal slips for the two other transactions in the amount of ₱60,000.00 each were regular on their faces. Contrary to Judge Misajon's assertion, no modifications or intercalations appeared to have been made in the figures written thereon. Judge Misajon's other theory that she may have signed incomplete or blank withdrawal slips while she was busy or under time constraint was also unacceptable, considering that it was incumbent upon her to be cautious about these matters, as she was dealing with court funds. Thus, even assuming Judge Misajon's theory

[16] *Id*. at 436-437; citations omitted.

to be true, it did not render her unaccountable, since she failed to exercise ordinary diligence in the discharge of her duties.

Nevertheless, Judge Castrojas concluded that Nolasco was undeserving of any sympathy. She was motivated by personal ambition when she acceded to Judge Misajon's instructions even if she knew that the withdrawals were unauthorized. In fine, Judge Misajon and Nolasco cooperated with each other in effecting the unauthorized withdrawals and should both be faulted for the same.

Consequently, the investigating judge recommended that Judge Misajon and Nolasco be ordered to jointly and severally pay the amount of ₱87,800.00. He also recommended that Nolasco be dismissed from the service in view of the seriousness of her offense. However, since Judge Misajon had already compulsorily retired while the investigation was still pending, her dismissal from the service was no longer possible.

On November 13, 2007, the Court referred the investigation report to the OCA for further evaluation. In a Memorandum[17] to this Court dated August 4, 2008, the OCA adopted the factual findings of Judge Castrojas except for the recommended penalty, thus:

IN VIEW OF THE FOREGOING, it is respectfully recommended to the Honorable Court that:

A. Respondent Jingkey Nolasco, Clerk of Court, MTC, San Jose, Antique be DISMISSED from the service for dishonesty and grave misconduct and directed to restitute the amount of ₱595,999.95 representing the amount of shortages in her collections. The Office of Administrative Services, OCA be directed to compute respondent's leave credits and forward the same to the Finance Division, Fiscal Management Office-OCA which shall compute the money value of the same, the amount as well as other benefits she may be entitled to, dispensing with the usual documentary requirements and to apply the same to the shortages in the following order of preference: Fiduciary Fund, Judiciary Development Fund,

[17] *Id*. at 495-505.

Special Allowance for the Judiciary and Clerk of Court General Fund;

B. Legal Office, OCA (be) directed to file criminal charges against respondent Jingkey Nolasco before the appropriate court.

C. Appropriate graft and corruption case be initiated by the Legal Office, OCA against Judge Ma. Monina Misajon before the Office of the Ombudsman.[18]

According to the OCA, while Judge Misajon could no longer be held administratively liable due to her compulsory retirement from the service, a criminal case may nonetheless be initiated against her based on the findings in these administrative proceedings. On the other hand, apart from being dismissed from the service on the grounds of dishonesty and grave misconduct, a criminal case may likewise be brought against Nolasco whose acts amount to malversation of public funds under Article 217 of the Revised Penal Code.

We agree with the recommendations of the OCA.

Nolasco is administratively liable for the shortages which she incurred in her cash collections. She failed to immediately deposit the various funds collected with the authorized government depository bank, in violation of pertinent court circulars[19] which direct the same. She also admitted that she misappropriated the money for her personal use without specifically explaining the reasons for her actions, and has yet to restitute the total amount of ₱625,175.29,[20] broken down as follows:

Judiciary Development Fund (May 1, 2001 to February 13, 2005)

Collections		₱ 572,775.64	
Less: Deposits		459,347.60	
Reported Balance of Accountability		₱ 113,428.04	
Less: Restitutions		78,431.00	
Balance of Accountability			**₱ 34,997.04**

[18] *Id.* at 504-505.

[19] Circular No. 50-95 (October 11, 1995) and Administrative Circular No. 3-2000 (June 15, 2000).

[20] Determined by the FMO-OCA as of February 2008.

Special Allowance for the Judiciary Fund (November 11, 2003 to February 13, 2005)			
Collections	₱	128,185.60	
Less: Deposits		78,920.00	
Balance of Accountability	₱	49,265.60	
Less: Restitutions		56,274.30	
Balance of Accountability (Excess Deposit)			**(7,008.70)**
General Fund (May 1, 2001 to November 10, 2003)			
Collections	₱	60,639.00	
Less: Deposits		57,452.00	
Reported Balance of Accountability	₱	3,187.00	
Less: Restitutions		-	
Balance of Accountability			**3,187.00**
Sheriff's Trust Fund (May 1, 2001 to February 13, 2005)			
Collections	₱	38,000.00	
Less: Withdrawals		31,000.00	
Unwithdrawn Sheriff's Trust Fund	₱	7,000.00	
Less: Cash Presented		-	
Reported Balance of Accountability	₱	7,000.00	
Less: Restitution		7,000.00	
Balance of Accountability			
Fiduciary Fund (May 1, 2001 to February 13, 2005)			
Unwithdrawn Fiduciary Fund, 5/4/2001	₱	775,810.35	
Add: Collections		2,526,299.40	
Total	₱	3,302,109.75	
Less: Withdrawals		2,089,409.75	
Unwithdrawn Fiduciary Fund, 2/13/05	₱	1,212,700.00	
Less: Balance of Fiduciary Fund Bank Net of Unwithdrawn Interest-Account Balance, 2/13/05	₱	649,826.11	
Less: Deposit, 2/21/05		2,000.00	
Total	₱	651,826.11	
Less: Unwithdrawn Interest		33,126.06	
Total	₱	618,700.05	
Reported Balance of Accountability	₱	593,999.95	
Less: Restitution		-	
Balance of Accountability			**₱ 593,999.95**
TOTAL BALANCE OF ACCOUNTABILITY			**₱ 625,175.29**[21]

As clerk of court, Nolasco was duty-bound to use reasonable skill and diligence in the performance of her duties. She was an accountable officer entrusted with the responsibility of

[21] *Rollo*, pp. 506-507.

collecting and depositing money belonging to the court.[22] She obviously failed to fulfill this responsibility and even converted the court's funds for her personal use. Her failure to account for the money entrusted to her, and to adequately explain and present evidence thereon, constitutes gross dishonesty, grave misconduct and even malversation of public funds which this Court will never countenance.[23]

Clerks of Court must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are responsible for ensuring that the court's funds are promptly deposited with an authorized government depositary bank. They are thus liable for any loss, shortage, destruction or impairment of such funds and property.[24]

Indeed, no position demands greater moral righteousness and uprightness from the occupant than does the judicial office. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the judiciary. The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are punishable by dismissal from the service, even if committed for the first time.[25]

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[22] *Office of the Court Administrator v. Ramos*, A.M. No. P-05-1966, October 20, 2005, 473 SCRA 463, 469.

[23] *Racho v. Dulatre*, A.M. No. P-01-1468, February 10, 2005, 450 SCRA 568, 576.

[24] *Office of the Court Administrator v. Cunting*, A.M. No. P-04-1917, December 10, 2007, 539 SCRA 494, 509-510.

[25] *Re. Financial Audit on the Books of Account of Ms. Laura D. Delantar, Clerk of Court, MTC, Leyte, Leyte*, A.M. No. 06-2-43-MTC, March 30, 2006, 485 SCRA 562, 570.

As for Judge Misajon, we find no reason to depart from the findings of the OCA and Judge Castrojas that she instructed Nolasco to withdraw unauthorized amounts from the FFA so that she could borrow the same. By simply comparing the deposit slip pertaining to the first withdrawal with her sample handwriting, this Court is left without any doubt that the penmanship on the deposit slip is in fact Judge Misajon's, as asserted by Nolasco. Judge Misajon even had the temerity to point to one of her other staff members as having filled up the deposit slip, which said staff member denied. It is thus evident that Judge Misajon was not forthright about the matter and did not tell the truth during her testimony before the investigating judge.

At this point, it is well to state that the function of evaluating the credibility of witnesses in administrative cases is primarily lodged in the investigating judge. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases where preponderance of evidence and proof beyond reasonable doubt, respectively, are required, applies *a fortiori* in administrative cases where the quantum of proof required is only substantial evidence. The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[26] In the case of Judge Misajon, we simply find no reason to disregard this rule.

Needless to say, Judge Misajon had the responsibility of seeing to it that Nolasco, as clerk of court, performed her duties and complied with circulars issued by the Supreme Court on the handling and safekeeping of court funds.[27] Had she supervised and managed her court in the manner that was expected of her as a judge, she could have discovered earlier that Nolasco was misappropriating funds and prevented the misappropriated

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[26] *Melecio v. Tan*, A.M. No. MTJ-04-1566, August 22, 2005, 467 SCRA 474, 479-480.

[27] *Re: Report on the Judicial & Financial Audit Conducted in MTCs, Bayombong & Solano & MCTC, Aritao-Sta.Fe, Nueva Vizcaya*, A.M. No. 05-3-83-MTC, October 9, 2007, 535 SCRA 224, 239.

amount from ballooning to such a large sum. It is even probable that Nolasco was emboldened to convert court collections for her personal use, as Judge Misajon herself dipped her hands into the court funds. By "borrowing" money from the collections of the court, she knowingly made the clerk of court violate circulars on the proper administration of court funds[28] and, in the process, became complicit in Nolasco's own wrongdoing.

Judge Misajon compulsorily retired from the service without any formal administrative charges brought against her. Despite the clear misconduct which she committed, the Court cannot impose administrative sanctions against her, since she no longer falls within the administrative supervision of the Court. The Court, however, is not without recourse. As pointed out by the OCA, her act of inducing or persuading respondent Nolasco to violate duly promulgated rules on the administration of court funds may well constitute a violation of Section 3(a), Republic Act No. 3019.[29] Thus, a criminal case may be initiated against Judge Misajon on the basis of the findings in this administrative matter.

Time and again, this Court has stressed that those charged with the dispensation of justice – from the presiding judge to the lowliest clerk – are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee of the judiciary

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[28] *Id*. at 240.

[29] SECTION 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced or influenced to commit such violation or offense.

x x x x x x x x x

should be an example of integrity, uprightness and honesty. Sadly, respondent Nolasco and Judge Misajon failed to live up to these stringent standards.[30]

WHEREFORE, in view of the foregoing, respondent Jingkey B. Nolasco is found *GUILTY* of gross dishonesty and grave misconduct and is hereby *DISMISSED* from the service with forfeiture of retirement and all other benefits, and with prejudice to reemployment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations. She is directed to *RESTITUTE* the amount of ₱625,175.29 representing the amount of shortages in her collections. The Office of Administrative Services (OAS)-OCA is directed to compute her leave credits and forward the same to the Finance Division, FMO-OCA which shall compute the money value of the same, and to apply the same to her accountabilities in the following order of preference: Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary and Clerk of Court General Fund.

The Legal Office-OCA is further directed to *INITIATE* the filing of criminal charges against respondent Nolasco and (Ret.) Judge Ma. Monina S. Misajon before the appropriate court or body.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Velasco, Jr., J., no part due to prior action in OCA.

Austria-Martinez and *Tinga, JJ.,* on official leave.

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[30] *Report on the Financial Audit Conducted at the MCTC-Mabalacat, Pampanga*, A.M. No. P-05-1989, October 20, 2005, 473 SCRA 456, 461.

EN BANC

[A.M. No. RTJ-06-2014. March 4, 2009]

NILDA VERGINESA-SUAREZ, *complainant, vs.* **JUDGE RENATO J. DILAG and COURT STENOGRAPHER III CONCEPCION A. PASCUA,** *respondents.*

[A.M. No. 06-07-415-RTC. March 4, 2009]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE RENATO J. DILAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; SERIOUS CHARGES; PENALTY; CASE AT BAR. — Judge Dilag is found guilty of serious charges falling under Section 8 of Rule 140 of the Rules of Court, namely, "gross misconduct constituting violations of the Code of Judicial Conduct" in A.M. No. RTJ-06-2014 and "gross ignorance of the law or procedure," as well as "gross negligence or inefficiency" in A.M. No. 06-07-415-RTJ. Under Section 11(A) of the said rules, the imposable penalties for the commission of a serious charge are as follows: "SEC. 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal fron the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00." Considering that Judge Dilag had already been administratively sanctioned in *Ma. Teresa De Jesus v. Judge Renato J. Dilag* wherein he was fined in the amount of ₱30,000.00 for gross ignorance of the law, Judge Dilag's already grave offenses are further aggravated. Therefore, this Court imposes upon Judge Dilag the extreme administrative penalty of dismissal from the

service with forfeiture of all retirement benefits, excluding accrued leave benefits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE OFFENSES; PENALTY; CASE AT BAR. — [T]he administrative liability of Pascua for graft and corruption is classified as a grave offense sanctioned by Paragraph A (9) of Section 52, in relation with Section 58, Rule IV of Civil Service Commission Memorandum Circular No. 19-99 as follows: "Par. A (9), Section 52. — Receiving for personal use of a fee, gift, or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws. 1st Offense — Dismissal. x x x 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." Thus, the Court imposes upon Pascua the penalty of dismissal from the service which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service. The Court further agrees with the Investigating Justice that in view of the evidence on record, Pascua should be investigated for possible criminal liability for the same acts.

APPEARANCES OF COUNSEL

Nestor F. Dantes for complainant.

Augusto S. Jimenez and *Raymond Anthony C. Dilag* for Judge R.J. Dilag.

Public Attorney's Office for C.A. Pascua.

D E C I S I O N

***PER CURIAM*:**

These consolidated cases involve (a) the administrative charges of graft and corruption against respondents Judge Renato J. Dilag (Judge Dilag) and Court Stenographer III Concepcion A. Pascua (Pascua) of Branch 73 of the Regional Trial Court (RTC) of Olongapo City, Zambales filed by Nilda Verginesa-Suarez (Suarez), Court Stenographer III of the same court; and (b) the administrative charges for gross misconduct and gross ignorance of the law against Judge Dilag filed by the Office of the Court Administrator (OCA). These cases also include the counter-charges of Judge Dilag and Pascua against Suarez for falsification, negligence in the transcription of stenographic notes, and absence without official leave.

Administrative Matter No. RTJ-06-2014 stemmed from the *Complaint-Affidavit*[1] dated November 25, 2005 and *Letter*[2] dated January 11, 2006 filed before the OCA by Suarez against Judge Dilag and Pascua allegedly for collecting ₱30,000.000 from litigants in consideration of favorable judgments in cases for annulment or declaration of nullity of marriage. Suarez supported her accusation with a sworn statement of a certain Belen Trapane who allegedly paid the amount of ₱30,000.00 to Pascua to obtain a favorable judgment in an action for declaration of nullity of marriage lodged before the court presided by Judge Dilag. She also attached an anonymous letter addressed to former Chief Justice Hilario G. Davide, Jr., which stated that Judge Dilag charged the amount of ₱30,000.00 for a favorable judgment in every annulment case. Suarez further pointed out the existence of conflicting decisions rendered by Judge Dilag in the following cases:

1. Civil Case No. 180-0-2001 entitled "*Lanie Pancho v. Rolando Gopez*" (*Pancho* case) for Declaration of

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[1] *Rollo*, pp. 37-41.

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

Nullity of Marriage which was dismissed in a *Decision* dated March 14, 2005 but granted in a *Decision* dated June 16, 2005;

2. Civil Case No. 433-0-2003 entitled "*Jeffrey Joseph T. Tomboc v. Ruth Tomboc*" (*Tomboc* case) for Declaration of Nullity of Marriage which was dismissed in a *Decision* dated April 29, 2005 but granted in a *Decision* dated May 20, 2005; and

3. Special Proceeding No. 436-0-2002 entitled "Petition for Voluntary Dissolution of the Conjugal Partnership of Gains and for the Separation of the Common Properties, Danilo del Rosario and Rachelle del Rosario, Petitioners" (*Del Rosario* case) which was dismissed in a *Decision* dated July 27, 2004 but granted in a *Decision* dated September 7, 2004.

Judge Dilag and Pascua filed their respective answers to the complaint in compliance with the directive of the OCA. In his *Answer*[3] dated February 21, 2006, Judge Dilag denied the allegation of graft and corruption and he filed administrative countercharges against Suarez for falsification or fabrication of the purported dismissed decisions; negligence in the transcription of stenographic notes assigned to her, supported by several manifestations and motions of lawyers; and absence without official leave from November 22, 2005 to December 12, 2005.

In her *Kontra-Salaysay*[4] dated February 23, 2006, Pascua denied that she collected money from litigants for Judge Dilag and also filed countercharges against Suarez.

Suarez filed a *Supplemental Affidavit*[5] dated March 16, 2006 and alleged therein that Judge Carmelita Fruelda of Branch 43 of the RTC of San Fernando, Pampanga, attempted to persuade her to withdraw the administrative case she filed against

[3] *Id.* at 80-104.

[4] *Id.* at 105-121.

[5] *Id.* at 161-169.

Judge Dilag and Pascua. Suarez also filed separate replies to the comments of Judge Dilag and Pascua. In her *Reply to the Comment of Judge Renato Dilag*[6] dated May 10, 2006, Suarez contended that she had transcribed her pending transcript of stenographic notes and denied that she went on absence without official leave during the period adverted to by Judge Dilag. Suarez further pointed out that Judge Dilag had been previously charged and sanctioned administratively in *Ma. Teresa De Jesus v. Judge Renato J. Dilag*,[7] wherein Judge Dilag was fined ₱30,000.00 for gross ignorance of the law.

The OCA observed that the controversies between the parties were replete with substantial factual issues, and so it recommended a formal administrative inquiry to be conducted by a designated Associate Justice of the Court of Appeals. In a *Resolution*[8] dated August 2, 2006, this Court resolved, upon the recommendation of the OCA, to: (1) treat the comment of Judge Dilag as a complaint against Suarez; (2) redocket the instant matter as an administrative matter and refer the same to an Associate Justice of the Court of Appeals for investigation within ninety (90) days from receipt of the record; and (3) require the Investigating Justice to submit a report within thirty (30) days from termination of the investigation.

Administrative Matter No. 06-07-415-RTC, on the other hand, arose from a series of anonymous letters which reported the alleged graft and corrupt practices of Judge Dilag. As early as December 25, 2003, an anonymous letter addressed to former Chief Justice Davide, Jr. was indorsed and referred to the OCA.[9] According to this letter, Judge Dilag would initially dismiss a case, but, after payment, would subsequently re-open the case and grant the same. Another anonymous letter dated February 1, 2004 likewise reported that Judge Dilag collected ₱30,000.00

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[6] *Id.* at 124-160.

[7] A.M. No. RTJ-05-1921, September 30, 2005, 471 SCRA 176.

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

[9] Records, Folder of Exhibits for the OCA, Exhibit "O-OCA".

for a favorable judgment in cases of annulment of marriage.[10] On February 9, 2005, the OCA received the last of these anonymous letters which alleged that Judge Dilag issued two (2) conflicting decisions in the *Del Rosario* case.[11]

On February 10, 2005, the OCA directed a discreet investigation of the allegations against Judge Dilag.[12] Pascua, in the meantime, submitted her resignation *Letter* dated May 11, 2006 addressed to Judge Dilag.[13] On May 22 to 26, 2006, a judicial audit team composed of Atty. Teresita A. Tuazon, Martha Florentina A. Bedana, Noe A. Pleños, Jacklyn Manabat, Zernan S. Perez, and Ma. Rosario Cristina I. Ferrer pursued the directive of the OCA and conducted a physical inventory of cases in the court presided by Judge Dilag. In its *Audit Report on the Judicial Audit Conducted at the Regional Trial Court, Branch 73, Olongapo City, Zambales*[14] dated June 15, 2006, the judicial audit team observed, among others, that Judge Dilag committed irregularities in the handling and disposition of cases before his sala as follows:

(a) In *Lilibeth Agustin v. Angel B. Lopez,* CV. No. 242-0-2003, a petition dated May 4, 2003 was filed for declaration of nullity of marriage on the ground of lack of a valid marriage license and psychological incapacity of the respondent. In a Decision dated July 22, 2005, the petition was dismissed for lack of merit for failure of the petitioner to establish that the record or entry of the marriage license applied for and issued from 1983 to 1991 was unavailable due to destruction when Mt. Pinatubo erupted in 1991. On August 2, 2005, a motion for reconsideration was filed stressing the psychological incapacity of the defendant. In a Resolution dated September 30, 2005,

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[10] *Id.,* Exhibit "P-OCA".

[11] *Id.,* Exhibit "B-OCA".

[12] *Id.,* Exhibit "C-OCA".

[13] *Rollo,* p. 43.

[14] *Id.* at 2-42.

the marriage was declared null and void *ab initio* pursuant to Art. 36 of the Family Code.

(b) There were two (2) conflicting decisions in SP No. 436-0-2002, "Danilo del Rosario and Rachelle del Rosario, an action for the Voluntary Dissolution of the Conjugal Partnership of Gains and for the Separation of the Common Properties." To the Monthly Report for the Month of July 2004, attached was a Decision dated July 27, 2004 **dismissing** the petition for an Agreement on a Voluntary Dissolution of Conjugal Partnership of Gains dated December 19, 2001 entered into by petitioner spouses for being contrary to law, moral, public policy and public order. However, in the case record, attached was a Decision dated September 7, 2004, **granting** the petition based on the same Agreement for not being contrary to law, moral, public policy and public order.

(c) In *Lourdes Sotto v. Cresencio Diwa*, CV No. 221-0-2005, which involved a Petition for Declaration of Nullity of Marriage, a decision (dated January 24, 2006) was rendered before the expiration of the period for the parties to submit memoranda (on January 26, 2006). Also, an entry of judgment dated February 20, 2006 was issued despite lack of a certificate from the Office of the Solicitor General (OSG) that it had received a copy of the decision.

(d) In *Joyce Moreno v. Alvin Moreno*, CV No. 188-0-01, also a Petition for Declaration of Nullity of Marriage, the petition was originally denied in a decision dated February 12, 2003. On February 24, 2003, a Motion for New Trial was filed alleging newly discovered evidence consisting, among other things, of the psychological report concerning defendant, which would show that indeed he was psychologically incapacitated to perform the marital obligations. On March 20, 2003, the Motion was granted and the marriage was declared null and void. Entry of Judgment was made on June 9, 2003 with no return or certificate showing that the OSG had received a copy of the decision/order.

(e) Two (2) petitions entitled *Eliodoro Q. Perez v. Adelita Perez* for declaration of nullity of marriage were filed. The first petition was filed on July 17, 2001 and docketed as CV No. 328-0-2001. In an Order dated October 28, 2003, the Motion to Dismiss dated September 25, 2003 filed by the plaintiff was granted, considering that no counterclaim was pleaded by the defendant in her answer and there was no opposition interposed by the public prosecutor. The case was considered dismissed **with prejudice.** However, a second petition was filed on February 01, 2005 docketed as CV No. 44-0-05 involving the same parties and also for declaration of nullity of marriage. The petition was granted in a Decision dated June 15, 2005, wherein the marriage was declared null and void *ab initio.* Entry of Judgment was effected on July 11, 2005 without proof of receipt of the decision by the OSG. There was a rumor circulating within the courts that petitioner in these cases sponsored the family vacation of Judge Dilag in the US worth US$6,000.00. The audit team also noted the speed in the disposition of this case, having been filed only on February 01, 2005 and decided on July 15, 2005.

(f) In *Aurea Rowena Cayabyab v. Carlo Cayabyab,* CV No. 125-0-05, an action for Declaration of Nullity of Marriage, the petition was granted in a Decision dated February 7, 2006, and a Certificate of Finality was issued on March 01, 2006 by Clerk of Court VI John V. Aquino of the Office of the Clerk of Court (OCC) based on the registry return card with a stamped receipt by the OSG of the subject decision. Subsequently, the OSG filed a Manifestation and Motion dated March 21, 2006 to Recall Certificate of Finality dated March 01, 2006, asserting that the OSG was never furnished with a copy of the decision. In an Order dated March 21, 2006, the Certificate of Finality issued on March 1, 2006 was recalled, and the OSG was furnished with a copy of the decision. During a conference with the audit team, Judge Dilag relayed to the Team Leader that he had his own investigation on the matter, and that he found out that the fake registry return card attached to the records was the wrongdoing of Pascua. Consequently, he asked Pascua to resign in order to preserve the integrity of the Court. Pascua

resigned per a letter dated May 11, 2006 effective May 16, 2006 for personal reasons.

(g) In a petition for adoption filed by the spouses Angelito D. Roldan and Yolanda Roldan, a similarly fake registry return card purportedly showing receipt of the subject decision by the OSG was found in the case records.

(h) Entry of Judgment was made in the following cases despite absence of proof that the OSG received copies of the decisions:

i) CV Case No. 321-0-03 (*Edwin Santos v. Berlyn Santos*)
For: Declaration of Nullity of Marriage
ii) CV Case No. 222-0-00 (*Dinoso v. Corpuz*)
For: Annulment of Marriage
iii) CV Case No. 167-0-02 (*Robles v. Robles*)
For: Annulment of Marriage
iv) CV Case No. 43-0-02 (*Lazo v. Lazo*)
For: Annulment of Marriage
v) CV Case No. 384-0-04 (*Lim v. Lim*)
For: Annulment of Marriage
vi) CV Case No. 187-0-04 (*Manchura v. Paje*)
For: Annulment of Marriage
vii) SP No. 99-0-02 (*Saldana v. Saldana*)
For: Annulment of Marriage
viii) CV Case No. 433-0-03 (*Tomboc v. Tomboc*)
For: Annulment of Marriage

The judicial audit team recommended to the OCA that the foregoing findings be consolidated with Administrative Matter No. RTJ-06-2014 and referred to an Investigating Justice of the Court of Appeals. It was also recommended that the resolution of the issue of the resignation of respondent Pascua be deferred and subjected to the outcome of the investigation by the Investigating Justice. The OCA adopted the recommendations of the judicial audit team. In a *Resolution*[15] dated August 1, 2006, this Court approved the recommendation of the OCA.

[15] *Id.* at 111-134.

These cases were then assigned to Associate Justice Ramon R. Garcia of the Court of Appeals for investigation, report and recommendation.

In the course of the preliminary conference, the parties submitted their respective proposed facts of the cases. The Investigating Justice summarized the factual disputes and issues raised by the parties in the *Pre-Trial Order*[16] dated January 17, 2007 and *Supplemental Pre-Trial Order*[17] dated January 31, 2007, as follows:

PRE-TRIAL ORDER

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A. THE ISSUES RELATIVE TO THE COMPLAINT OF PRIVATE COMPLAINANT SUAREZ

1) Whether or not respondent Judge rendered conflicting decisions in the three (3) civil cases. [Civil Case No. 180-0-2001, Civil Case No. 433-0-2003, and Civil Case No. 436-0-2002]

2) Whether or not a certain Belen Trapane, paid in behalf of plaintiff Lanie Pancho, in Civil Case No. 180-0-2001 for declaration of nullity of marriage, the amount of ₱30,000.00 to respondents through respondent Pascua.

3) Whether or not respondents, through respondent Pascua, are charging ₱30,000.00 to ₱40,000.00 for the grant of every petition for annulment or declaration of nullity of marriage.

B. THE ISSUES RELATIVE TO THE COUNTER-CHARGES OF RESPONDENTS JUDGE DILAG AND COURT STENOGRAPHER III PASCUA

1) Whether or not the three (3) Dismissed Decisions are falsified.

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[16] Records, pp. 245-249.

[17] *Id.* at 262-268.

2) Whether or not private complainant failed to transcribe the transcript of stenographic notes of several cases . . . as enumerated in respondent Judge's answer.

3) Whether or not private complainant went on absence without official leave (AWOL) from November 22, 2005 to December 12, 2005.

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SUPPLEMENTAL PRE-TRIAL ORDER

xxx xxx xxx

THE ISSUES:

Based on the . . . specific accusations of complainant OCA against respondent Judge, the core issue involved herein is whether or not respondent Judge is guilty of gross misconduct and/or gross negligence in the handling of the above-mentioned cases as set forth [by the OCA].

Thereafter, the parties presented their respective sets of evidence.

The evidence for the complainants consisted of two folders of documentary exhibits[18] and the testimonies of Admer Lumanog,[19] Belen Trapane,[20] private complainant Suarez,[21] Atty. Teresita A. Tuazon,[22] Marissa A. Pascual,[23] Evelyn A. Tec,[24] Luzviminda P.

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[18] Records, Folders of Exhibits for Private Complainant (Exhibits "A" to "RR" with submarkings) and the OCA (Exhibits "A-OCA" to "DDDD-OCA" with submarkings).

[19] TSN dated January 17, 2007, pp. 19-51; and TSN dated February 6, 2007, pp. 9-43.

[20] TSN dated January 17, 2007, pp. 53-89; and TSN dated January 29, 2007, pp. 9-28.

[21] TSN dated January 17, 2007, pp. 92-151; TSN dated January 22, 2007, pp. 7-52; TSN dated January 29, 2007, pp. 28-42; and TSN dated January 31, 2007, pp. 7-123.

[22] TSN dated January 22, 2007, pp. 56-112; TSN dated February 6, 2007, pp. 103-211; and TSN dated February 8, 2007, pp. 42-67.

[23] TSN dated February 6, 2007, pp. 46-55.

[24] *Id.* at 56-63.

Lacaba,[25] Aurea Rowena Quiamco Cayabyab,[26] and Rizalina B. Tiongson.[27]

Private complainant **Suarez** was a Court Stenographer III and a colleague of Pascua. They were both assigned to Branch 73 of the RTC of Olongapo City, Zambales, under the direct supervision of Judge Dilag during the time material to these cases. Private complainant testified that Judge Dilag and Pascua collected payments for favorable judgments on cases assigned to their court, and that respondent Pascua acted as the "bagman" of Judge Dilag. The respondent judge would allegedly dismiss or deny first the case/incident and then, after payment through Pascua, he would approve or grant said case/incident. Suarez presented the sets of dismissed and granted decisions in the *Pancho*, *Tomboc*, and *Del Rosario* cases, and identified the signatures of Judge Dilag in the said dismissed decisions.

In connection with the countercharges against her, Suarez substantiated her claim that she had accordingly transcribed her transcript of stenographic notes, [28] and that she was not on absence without official leave from November 22, 2005 to December 12, 2005, as she had an application for leave therefor, which was disapproved by Judge Dilag but duly approved by the Leave Division of the Office of Administrative Services of the OCA.[29] Suarez contended that Judge Dilag filed these countercharges against her in retaliation for her filing a complaint against him.

Belen Trapane testified that, on behalf of her friend who was the plaintiff in the *Pancho* case, she gave the amount of ₱30,000.00 to Pascua to obtain a favorable judgment. Trapane narrated that, when she earlier inquired from Pascua about the status of the said case, the latter told her that the same was

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[25] *Id.* at 64-102.

[26] TSN dated February 6, 2007, pp. 213-223; and TSN dated February 12, 2007, pp. 5-8.

[27] TSN dated February 8, 2007, pp. 6-40.

[28] Folder of Exhibits for Private Complainant, Exhibits "R" to "JJ".

[29] *Id.*, Exhibits "KK" to "LL".

dismissed but the decision could be replaced with another one granting the petition upon payment of ₱30,000.00, purportedly as required by Judge Dilag.

Admer Lumanog was the Docket Clerk in charge of the monthly report on civil cases of the court presided by Judge Dilag during the time material to these cases. He attested to the existence of the *Decision* dated July 27, 2004 or the decision of dismissal of the *Del Rosario* case. He said that this decision was included in the monthly report duly submitted to this Court through the Court Management Office of the OCA. Being familiar with the signatures of the official signatories in the said monthly report of cases, Lumanog identified the signature of Judge Dilag therein as well as in the decision of dismissal in the *Del Rosario* case.

Marissa Pascual and **Evelyn Tec** were also court employees at Branch 73 of the RTC of Olongapo City, Zambales, during the time material to these cases. Both testified that they became familiar with the customary signature of Judge Dilag in the course of their official functions, and that the signature appearing in the decision of dismissal of the *Del Rosario* case belonged to Judge Dilag.

Luzviminda Lacaba was a Utility Worker at Branch 73 of the RTC of Olongapo City, Zambales. She testified that, from the period of 2003 to 2005, Judge Dilag assigned and authorized her to take part in the releasing of decisions of their court and that, in the course of such function, she happened to read the decision of dismissal in the *Del Rosario* case.

Aurea Rowena Cayabyab was the plaintiff in *Cayabyab v. Cayabyab,* an annulment case lodged before Branch 73 of the RTC of Olongapo City, Zambales. She stated under oath that she also paid the amount of ₱30,000.00 to Pascua to facilitate the early termination of her case; and that she even paid the additional amount of ₱1,000.00 for the service on the OSG of the decision rendered by Judge Dilag in the said case. She, however, was disappointed to learn later on that the "Registry Return Receipt" which purportedly showed receipt of the said

decision by the OSG was a fake document, as the OSG manifested that there was no such service of the said decision and that it moved to recall the certificate of finality of this decision.

Atty. Teresita A. Tuazon was the Judicial Supervisor of the OCA who headed the judicial audit team which conducted the investigation and physical inventory of the cases in the court presided by Judge Dilag. She also testified to the existence of the conflicting decisions in the *Del Rosario* case. She further substantiated and expounded on the findings of the judicial audit team as to the irregularities in the disposition of the petitions for the declaration of nullity of marriage in *Lilibeth Agustin v. Angel Lopez*, *Lourdes Sotto v. Cresencio Diwa*, *Joyce Moreno v. Alvin Moreno*, *Eliodoro Perez v. Adelita Perez* and *Aurea Rowena Cayabyab v. Carlo Cayabyab*, and the petition for adoption in *Angelito Roldan and Yolanda Roldan*.

In *Lilibeth Agustin v. Angel Lopez*, the records allegedly revealed an evidentiary dearth of support for the decision rendered therein. Judge Dilag initially dismissed the petition for lack of proof that there was no valid marriage license, without resolving the issue about the psychological incapacity of the parties to contract marriage. However, upon motion for reconsideration, the marriage was nullified on the ground of psychological incapacity of one of the parties to the marriage.

In *Lourdes Sotto v. Cresencio Diwa*, the decision rendered by Judge Dilag was allegedly done with undue haste. Judge Dilag required the parties to file their respective memoranda within a certain period, but he then decided the case without waiting for those memoranda or even before the lapse of the period to file said memoranda.

In *Joyce Moreno v. Alvin Moreno*, the final ruling issued by Judge Dilag was allegedly based on a motion for new trial on the ground of newly discovered evidence, even if the said evidence was not attached to the motion, in violation of Section 2 of Rule 37 of the Rules of Court. Moreover, the purported newly discovered evidence consisted of a psychological

report of a psychiatrist, which should had been presented before or during the trial proceedings and not after the case had been dismissed. In any event, the entry of judgment of the final ruling was made without furnishing the OSG a copy thereof.

In *Eliodoro Perez v. Adelita Perez*, Judge Dilag was allegedly grossly ignorant of basic legal procedures, particularly of Section 2 of Rule 17 of the Rules of Court, because, despite the fact that the first petition filed had been "dismissed with prejudice" at the instance of the plaintiff, the second petition filed was subsequently granted. Moreover, the case was decided even before the submission of a report on the existence of collusion between the parties as required by Section 9 of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

In *Cayabyab v. Cayabyab*, a fake registry return card showing receipt by the OSG of the decision rendered therein was exposed; Pascua was allegedly responsible therefore and allegedly asked by Judge Dilag to resign because of such incident.

In the *Angelito Roldan and Yolanda Roldan* adoption case, the records of this case and those of the OSG conflicted as to the date of receipt by the latter of the decision rendered therein, which resulted in a premature entry of judgment on the said decision.

Finally, in *Dinoso v. Corpuz*, the decision rendered by Judge Dilag showed receipt by the OSG and an entry of judgment that had been made but the records of the OSG revealed that it had no records of the case.

Rizalina Tiongson was the Chief Administrative Officer of the Docket Division of the OSG. Contrary to the earlier findings of the judicial audit team, she attested to the fact of receipt by the OSG of copies of the decision rendered in the following cases:

1) *Lourdes Sotto v. Cresencio Diwa*
2) *Eliodoro Perez v. Adelita Perez*

3) *Edwin Santos v. Berlyn Santos*

4) *Robles v. Robles*

5) *Richel B. Lazo v. Lester Dean H. Cruz*

6) *Lim v. Lim*

7) *Manchura v. Paje*

8) *Saldana v. Saldana*

9) *Tomboc v. Tomboc*

However, she also attested to the fact that the OSG had no copies of the decisions rendered in *Joyce Moreno v. Alvin Moreno* and *Dinoso v. Corpuz,* and that the records of the OSG revealed a later date of receipt of the decision in the *Angelito Roldan and Yolanda Roldan* adoption case.

On the other hand, the evidence for the respondents consisted of two separate folders of documentary exhibits[30] and the testimonies of respondents Judge Dilag[31] and Pascua,[32] Atty. Ma. Soledad M. Santos,[33] Ester A. Asilo,[34] Bernardo Esteban,[35] Judge Carmelita Gutierrez-Fruelda,[36] and Atty. Lourdes I. de Dios.[37]

Judge Dilag denied that he collected fees from litigants in exchange for favorable decisions. He also denied that he rendered the three dismissed decisions in the *Pancho, Tomboc,* and *Del*

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[30] Records, Folders of Exhibits for Respondent Judge (Exhibits "1-Dilag to 9-Dilag" with submarkings) and Respondent Pascua (Exhibits "1-Pascua" to "4-Pascua" with submarkings).

[31] TSN dated January 26, 2007, pp. 8-73; TSN dated January 29, 2007, pp. 113-154; and February 13, 2007, pp. 5-68.

[32] TSN dated January 29, 2007, pp. 44-104.

[33] TSN dated January 23, 2007, pp. 7-12.

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

[35] *Id.* at 35-49.

[36] TSN dated January 25, 2007, pp. 26-37.

[37] *Id.* at 38-48; and TSN dated February 12, 2007, pp. 9-33.

Rosario cases and claimed that the signatures therein were not his. He further contended that he had no hand in the preparation of the monthly report of cases submitted to this Court, to which the dismissed decision in the *Del Rosario* case was attached.

As to the alleged irregularities in the disposition of cases raised by the judicial audit team, Judge Dilag argued that the said cases were decided upon due consideration of the evidence presented by the parties and pursuant to the applicable laws and rules of procedure. He further claimed that he exercised sound judicial discretion in the disposition of the said cases. Judge Dilag pointed out that the OSG did not even question the propriety or correctness of the decisions he rendered.

Respondent **Pascua** also denied that she collected money for Judge Dilag in exchange for favorable decisions, and she claimed that the accusations hurled by Suarez against her were merely fabricated.

Atty. Ma. Soledad M. Santos was the counsel on record of the plaintiff in the *Tomboc* case. She testified that she had not seen or received any decision denying the petition filed in the said case.

Ester A. Asilo was a Court Stenographer and designated Officer-in-Charge of the court presided by Judge Dilag. Upon examination of the records of the said cases under the instruction of Judge Dilag, she attested that the alleged decisions of dismissal in the *Pancho*, *Tomboc* and *Del Rosario* cases were not part of the aforesaid records. She further testified that Suarez failed to report for work from November 22, 2005 to December 12, 2005.

Bernardo Esteban was the Process Server of the court presided by Judge Dilag. He testified that Suarez was duly served with a memorandum issued by Judge Dilag which pertained to the present administrative countercharges against Suarez.

Judge Carmelita Gutierrez-Fruelda denied the allegation that she attempted to influence Suarez to withdraw the instant administrative case against Judge Dilag.

Atty. Lourdes I. de Dios was the counsel on record in the *Del Rosario* case. She testified that the said case was decided favorably by Judge Dilag, and that she was not aware of a purported previous decision of dismissal therein. During the course of the trial, Atty. De Dios also admitted that she was ordered suspended for a period of six (6) months from the practice of law by this Court in a *Resolution* dated January 26, 2001 rendered in Administrative Case No. 4943 entitled *Diana de Guzman v. Atty. Lourdes I. de Dios*, and that she commenced the practice of law again without any resolution from this Court lifting the said administrative sanction.

After the trial, the parties filed their respective memoranda. The OCA filed its *Memorandum*[38] dated February 23, 2007; Suarez separately filed her *Memorandum*[39] dated March 2, 2007; and Judge Dilag filed his *Memorandum*[40] dated February 23, 2007.

In his *Report and Recommendation*,[41] the Investigating Justice dismissed the administrative charges of graft and corruption against Judge Dilag and the countercharges of falsification, negligence in the transcription of stenographic notes, and absence without official leave against Suarez for insufficiency of evidence.

However, the Investigating Justice found Judge Dilag liable for: (1) "gross misconduct constituting violations of the Code of Judicial Conduct" for signing conflicting decisions in the *Pancho, Tomboc*, and *Del Rosario* cases; (2) "gross ignorance of the law and procedure" in handling *Joyce Moreno v. Alvin Moreno* and *Eliodoro Perez v. Adelita Perez*; and (3) "gross negligence and inefficiency" for failing to administer proper supervision over his staff when a fake registry return receipt

[38] Records, pp. 278-333.

[39] *Id.* at 372-385.

[40] *Id.* at 334-369.

[41] *Id.*, separate envelope.

was effected in *Cayabyab v. Cayabyab* and entries of judgment were effected in *Joyce Moreno v. Alvin Moreno*, *Angelito and Yolanda Roldan*, and *Dinoso v. Corpuz*. The Investigating Justice also found Pascua guilty of the administrative charges of graft and corruption.

The Investigating Justice further recommended that the matter raised by the OCA against Atty. Lourdes I. de Dios be referred to the Office of the Bar Confidant for appropriate action.

The exhaustive evaluation of evidence and findings of fact by the Investigating Justice are quoted hereunder:

A.M. No. RTJ-06-2014

A. Respondent Judge Renato J. Dilag

This Investigating Justice finds that there is **no sufficient, clear and convincing evidence to hold respondent Judge administratively liable for graft and corruption**. Jurisprudence dictates that the ground for the removal of a judicial officer must be established beyond reasonable doubt. The general rules regarding the admissibility of evidence in criminal trials apply to charges of misconduct in office, willful neglect, corruption or incompetence.

In the instant case, there is no clear and convincing evidence that indeed respondent Judge received money from litigants to obtain favorable decisions. The testimonies of Belen Trapane and Aurea Rowena Cayabyab, stating to the effect that they each paid ₱30,000.00 to respondents, through respondent Pascua, cannot be given due weight against respondent Judge for being hearsay evidence. By the same token, the rumors relative to the alleged acceptance of money in exchange for a favorable decision remain as such and cannot be admitted as evidence, let alone given due evidentiary weight. Corollary, private complainant Suarez fell short of the required degree of proof needed in an administrative charge of graft and corruption.

Respondent Judge, however, should be made accountable for **gross misconduct** constituting violations of the Code of Judicial Conduct, specifically Sections 1 and 2 of Canon 2; Section 2 of Canon 3; and, Section 1 of Canon 4, of the New Code of Judicial Conduct for the Philippine Judiciary which provide:

> Canon 2. Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

> Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
>
> Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Canon 3. Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision to made.

> Section 2. 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 the judiciary.

Canon 4. Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

> Section 1. Judges shall avoid impropriety and the appearance of impropriety of a judge.

This finds support in the case of *Kaw vs. Judge Osorio* [A.M. No. RTJ-03-1801, March 23, 2004], where the Supreme Court, though dismissing the charges of extortion and graft and corruption against respondent judge therein, nevertheless, held him administratively liable for violations of the Code of Judicial Conduct.

In the case at bench, the existence of the two (2) sets of conflicting decisions in the Pancho, Tomboc and Del Rosario cases, respectively, though speculative, absent clear evidence that respondent Judge received monetary considerations, the same, however, from a reasonable point of view, would seriously arouse the suspicion of a reasonable mind that something is wrong. In other words, while not conclusively and clearly proving the charge of graft and corruption, the same casts a cloud of suspicion upon the integrity, impartiality and propriety of which respondent Judge is expected to possess and manifest. These requirements are concepts of the mind which can only be manifested through actuations of a magistrate. Thus, as explicitly worded in the New Code of Judicial Conduct, a judge must not merely possess these requirements but he must be also be seen and perceived to be such. The judiciary is the bastion of justice, fairness and equity. Certainly, it cannot afford to have erring

magistrates who will only tarnish its image rather than maintain and preserve the same.

Contrary to respondent Judge's protestation and vehement denial, the evidence on record substantially proves that the three (3) dismissed Decisions dated March 14, 2005, April 29, 2005, and July 27, 2005 are, indeed, genuine decisions bearing respondent Judge's signature. Section 22, Rule 132 of the Revised Rules on Evidence provides that:

> Section 22. How genuineness of handwriting proved. – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen the writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting of such person may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

In the case at bench, a comparison of and closer look at the several documents admittedly bearing the signature of respondent Judge sufficiently show that indeed the signature in the three (3) dismissed Decisions were his. Furthermore, three (3) court personnel of respondent Judge, who are familiar with his signature, testified that the signature in the dismissed Decision dated July 27, 2005 in the Del Rosario case belongs to respondent Judge.

By the same token, respondent Judge cannot raise as an excuse that the three (3) dismissed decisions were never promulgated, nor received by the parties and their clients. It is sufficient that it was proven to genuinely exist and that they could create the suspicion of irregularity. It also bears stressing that respondent Judge cannot wash his hands that he had no participation in the preparation of the Monthly Report to which the dismissed Decision dated July 27, 2004 in the Del Rosario case was attached. Need it be pointed out that he declared under oath the truth and correctness of the information in the report. He cannot also put the blame for the error in the Monthly Report to his staff. He cannot use, as a shield, the negligence or malfeasance of court employees for his failure to perform his duties. As an administrator of the court, respondent Judge is directly responsible for the discharge of his official function and the administrative management thereof. He is called upon to supervise

court personnel to ensure prompt and efficient dispatch of the court's business for a speedy administration of justice. This may be gleaned from Rule 3.08 and 3.09, Canon 3, Code of Judicial Conduct which provide:

> Rule 3.08. A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.
>
> Rule 3.09. A Judge should organize and supervise the court personnel to ensure prompt and efficient dispatch of business, and require at all time the observance of high standards of public service and fidelity.

Worthy of stressing is the applicability by analogy of *People vs. Elpedes* [1 SCRA 1344] to the case at bench. In the said case, the Supreme Court ratiocinated that where the judge signed two (2) conflicting decisions on the same day, one of conviction and another of acquittal, the losing party could not be blamed for bringing an administrative action against the judge and that the unpromulgated decision of conviction is relevant evidence against the judge. The pertinent portions of the decision read:

> … [I]t is unheard of, verging on the suspicions, that on the same day should sign two decisions, one of conviction and one of acquittal, and on extremely irreconcilable terms. That is what happened in the Elpedes incident. Therefore, counsel for the losing party (Añosa) could not be blamed for implying something wrong and resorting to this Court against Judge Benitez, and enclosing in support of his accusation, a copy of the unpromulgated decision.
>
> xxx xxx xxx
>
> The unpromulgated decision was relevant evidence against the judge in the administrative case which the Supreme Court had given due course.

B. Court Stenographer III Concepcion A. Pascua

The undersigned Investigating Justice finds respondent Pascua guilty of graft and corruption.

Witnesses Belen Trapane and Aurea Rowena Cayabyab categorically and straightforwardly testified that they each paid the

amount of ₱30,000.00 to respondent Pascua so as to facilitate a favorable outcome of their cases. The bare and flat denial of respondent Pascua cannot overcome the positive and straightforward testimony of Belen Trapane. It is well-settled that to find merit in denial, the same must be buttressed by strong evidence of non-culpability. Likewise, the testimony of Aurea Rowena Cayabyab remains uncontroverted despite the opportunity to refute the same. It should be noted that during the latter part of the investigation, respondent Pascua did not anymore appear, nor can she be reached or contacted even by her own lawyers. Such disappearance is indicative of guilt.

C. Nilda Verginesa-Suarez

The counter-charges of respondent Judge against private complainant Suarez must be dismissed for lack of merit.

The allegation of respondent Judge that private complainant falsified the three (3) dismissed Decisions dated March 14, 2005, April 29, 2005, and July 27, 2004, respectively, must fail. There is absolutely no proof advanced by respondent Judge that the three (3) dismissed Decisions were falsified. Respondent Judge should know that mere allegation, absent any proof, is not evidence. On the contrary, it was indubitably established by private complainant that the three dismissed decisions do exist and that they genuinely bear the signature of respondent judge.

The charge of failure to transcribe TSNs must also fail. Respondent Judge had not shown any clear proof that indeed private complainant failed to transcribe the TSNs of the cases that were assigned to her. It is elementary that he who alleges must prove the same. Be that as it may, private complainant has sufficiently established that she has already transcribed the TSNs of the cases that were assigned to her.

Finally, there is also no merit in the charge of AWOL from November 22, 2005 to December 12, 2005. Evidence on record shows that on November 21, 2005 and November 30, 2005, respectively, private complainant filed two (2) applications for leave for November 22 to 25 and 29 to 30, 2005 and December 1, 2, 5 to 9, and 12 to 16, 2005. Though these applications were initially disapproved by respondent Judge, the same, however, were already inconsequential since the Supreme Court, through the OCA, had already acted upon her applications for leave as four (4) days of vacation leave with pay

from December 13 to 16, 2005 and fourteen (14) days of vacation leave with pay from November 22 to December 12, 2005, as evidenced by the Certification dated May 24, 2006 signed by Hermogena F. Bayani, SC Chief Judicial Staff Officer, Leave Division.

A.M. No. 06-07-415

Anent the OCA's charge of gross negligence, gross inefficiency, gross misconduct and/or gross ignorance of the law and procedure, this Investigating Justice finds respondent Judge guilty thereof.

Respondent Judge exhibited acts amounting to **gross ignorance of the law and procedure** in handling the cases cited in the Audit Report.

The grant of the Motion for New Trial in the Joyce *Moreno vs. Alvin Moreno* case was not proper because the psychological report and the affidavit of the psychiatrist who conducted the examination were not attached to the motion pursuant to 2nd paragraph of Section 2, Rule 37 of the 1997 Rules of Civil Procedure which requires that a motion for new trial based on newly-discovered evidence shall be supported by affidavits of witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence. Likewise, the psychological report cannot be considered as newly discovered evidence shall be supported by affidavits of witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence. Likewise, the psychological report cannot be considered as newly discovered evidence because it did not exist yet at the time of the trial as the psychological examination was conducted only after the case was initially dismissed. It is well-entrenched that newly-discovered evidence refers to evidence already existing prior or during the trial but which could not have been secured and presented during the trial despite reasonable diligence on the part of the litigant offering it or his counsel.

In the *Eliodoro Perez vs. Adelita Perez* case, respondent Judge was grossly ignorant when he erroneously took cognizance of the second petition for declaration of nullity of marriage on the ground of psychological incapacity filed by petitioner therein considering that he had already dismissed with prejudice the first petition involving the same parties, issues and causes of action with that of the first petition. Under Section 2, Rule 17 of the 1997 Revised Rules of Civil Procedure, the dismissal of the complaint upon the motion

of plaintiff is without prejudice unless otherwise specified in the order. Thus, the only instance when dismissal of an action under the rule is with prejudice is when the order itself so states. In the instant case, the Order dated October 28, 2003 dismissing the petition stated that the dismissal was with prejudice. Corollary, in accordance with elementary legal procedure, a dismissal with prejudice is an adjudication on the merits which would bar its refilling on the ground of *res judicata*. It must be stressed that respondent Judge's ignorance of the procedure was re-affirmed during this investigation when he was asked the reason for the qualification of the dismissal with prejudice, to which he answered that whether the dismissal is with or without prejudice, the parties can still re-file the case.

In the same Perez case, respondent Judge also disregarded basic law and procedure when he decided the case even before the submission of the City Prosecutor relative to the investigation to determine collusion between the parties as required under Section 9 of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

A judge is the embodiment of competence, integrity and independence to uphold and maintain public confidence in the legal system. Thus, while he is expected to keep abreast of developments in law and jurisprudence, he is presumed to have more than a cursory knowledge of the rules of procedure. Not every error is indicative of ignorance, for if committed in good faith, no administrative sanction is imposed. Good faith, however, inheres only within the parameters of tolerable judgment. It does not apply where the issues are so simple and the applicable legal procedures evident and basic as to be beyond possible margins of error. In the case at bench, respondent Judge failed to follow basic legal procedures which are not excusable but renders him liable to administrative sanction for gross ignorance of the law and procedure.

Respondent judge argued that the insinuations of the OCA that malice and fraud attended the dispositions of these cases have not been sufficiently proven. The argument fails. In the case of *Ora vs. Judge Almajar* [A.M. No. MTJ-05-1599, October 14, 2005], the Supreme Court, while finding that there was no allegation that respondent judge therein was motivated by bad faith, malice or corruption, nevertheless, held him administratively liable for gross ignorance of the law. The pertinent portions of the decision read:

> Respondent judge is charged with gross ignorance of the law. However, to warrant a finding of gross ignorance of the law, the error must be so gross and patent as to produce an inference of bad faith. The acts complained of must not only be contrary to existing law and jurisprudence, but were also motivated by bad faith, fraud, dishonesty, and corruption. For to hold a judge administratively accountable for every erroneous order or decision he renders would be intolerable.
>
> In the case at bar, there was no allegation whatsoever that respondent judge was motivated by bad faith, malice or corruption when he issued the premature warrant of arrest. Be that as it may, however, we hold him administratively liable for his unfamiliarity with the rules on the conduct of preliminary investigations. We have always exhorted judges to be conversant with basic legal norms and precepts as well as with statutes and procedural rules. They are expected to follow developments in the law and to apply them. Having accepted the exalted position of a judge, whereby he judges his fellowmen, the judge owes it to the public who depend on him, and to the dignity of the court he sits in, to be proficient in the law. Thus, the Code of Judicial Conduct requires a judge to be faithful to the law and be the embodiment of professional competence.

In his desperate bid to evade liability, respondent Judge reasoned out that since the OSG did not appeal, the same indicates the correctness of his decisions. The argument, however, has no persuasive effect. It bears stressing that in the instant case, no private rights are involved. The Supreme Court, however, is not proscribed from taking cognizance of the irregularities committed by judges and justices. The Court, through the OCA, has the power of judicial discipline over lower court justices, judges, and court personnel pursuant to paragraph C (1) of the Supreme Court Administrative Circular No. 30-91. The findings, therefore, contained in the Audit Report and approved by the Supreme Court to be included in this investigation is merely an exercise of such power.

Finally, respondent Judge was **grossly negligent and inefficient** in failing to administer proper supervision over his staff when a fake registry return receipt was effected in the Cayabyab case and Entries of Judgement were effected in the *Joyce Moreno vs. Alvin Moreno, Angelito and Yolanda Roldan and Dinoso vs. Corpuz cases w*ithout copies of the decisions thereof being furnished to the OSG. He tried

to evade liability by declaring that these were no longer his tasks but those of his staff. This is a lame excuse which merits scant consideration since it is well-settled that a judge cannot use as a shield the malfeasance or negligence of his staff. [Emphasis supplied]

We adopt the findings of fact and recommendations of the Investigating Justice with respect to the administrative sanctions to be imposed upon respondent Pascua, the dismissal of the counter-administrative charges against private complainant Suarez, and the action to be taken on the charge for illegal practice of law against Atty. Lourdes I. de Dios. However, we raise the administrative sanction to be imposed upon respondent Judge Dilag to the maximum penalty.

Judge Dilag is found guilty of serious charges falling under Section 8 of Rule 140 of the Rules of Court, namely, "gross misconduct constituting violations of the Code of Judicial Conduct" in A.M. No. RTJ-06-2014 and "gross ignorance of the law or procedure," as well as "gross negligence or inefficiency" in A.M. No. 06-07-415-RTJ. Under Section 11(A) of the said rules, the imposable penalties for the commission of a serious charge are as follows:

SEC. 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Considering that Judge Dilag had already been administratively sanctioned in *Ma. Teresa De Jesus v. Judge Renato J. Dilag*[42]

[42] *Supra* at note 7.

wherein he was fined in the amount of ₱30,000.00 for gross ignorance of the law, Judge Dilag's already grave offenses are further aggravated. Therefore, this Court imposes upon Judge Dilag the extreme administrative penalty of dismissal from the service with forfeiture of all retirement benefits, excluding accrued leave benefits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

On the other hand, the administrative liability of Pascua for graft and corruption is classified as a grave offense sanctioned by Paragraph A (9) of Section 52, in relation with Section 58, Rule IV of Civil Service Commission Memorandum Circular No. 19-99 as follows:

> Par. A (9), Section 52. — Receiving for personal use of a fee, gift, or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws. 1st Offense – Dismissal.
>
> xxx xxx xxx
>
> 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.

Thus, the Court imposes upon Pascua the penalty of dismissal from the service which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service. The Court further agrees with the Investigating Justice that in view of the evidence on record, Pascua should be investigated for possible criminal liability for the same acts.

Finally, the Court approves the recommendation to refer the charge of illegal practice of law against Atty. Lourdes I. de Dios (raised by the OCA in its memorandum) to the Office of the Bar Confidant.

WHEREFORE, in view of all the foregoing, we hold as follows:

1. Respondent Judge Renato J. Dilag is hereby *DISMISSED FROM THE SERVICE*, with forfeiture of all retirement benefits, excluding accrued leave benefits, and disqualification from reinstatement or appointment to any public office including government-owned or controlled corporations, for gross misconduct, gross ignorance of the law or procedure, and gross negligence and inefficiency.

2. Respondent Court Stenographer III Concepcion A. Pascua is hereby *DISMISSED FROM THE SERVICE*, which carries the accessory penalties of cancellation of her eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service, for graft and corruption under Paragraph A(9), Rule IV of Civil Service Commission Memorandum Circular No. 19-99, and this administrative case against respondent Pascua is hereby *REFERRED* to the Office of the Ombudsman for appropriate action.

3. The counter-administrative charges of falsification, negligence in the transcription of stenographic notes, and absence without official leave against private complainant Nilda Verginesa-Suarez are hereby *DISMISSED* for lack of merit.

4. The manifestation of the counsel of the Office of the Court Administrator in its *Memorandum*[43] dated February 23, 2007 concerning the alleged irregularities committed by Atty. Lourdes I. de Dios is hereby *REFERRED* to the Office of the Bar Confidant for appropriate action.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago and *Tinga, JJ.,* on official leave.

[43] *Supra* at note 40.

SECOND DIVISION

[A.M. No. RTJ-06-2026. March 4, 2009]
(Formerly OCA IPI No. 06-2496-RTJ)

ATTY. ANTONIO G. CAÑEDA, *complainant, vs.* **JUDGE ERIC F. MENCHAVEZ,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; SHOULD OBSERVE DECORUM BY ACTING WITH DIGNITY AND COURTESY TO ALL THOSE PRESENT IN THE COURTROOM; CASE AT BAR. — [T]he New Code of Judicial Conduct requires "(*Judges*) *shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer,"* and their *"behavior and conduct x x x must reaffirm the peoples' faith in the integrity of the judiciary."* The respondent violated this rule when, after a show of anger, he brought and openly displayed his gun on his courtroom table while hurling a confrontational question at the offending counsel. While the New Code of Judicial Conduct requires a magistrate to maintain order and decorum in the court, the Code itself sets limits on how a judge should do this. Section 6, Canon 6 of the Code provides: "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. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control." To reiterate, the judge himself must observe decorum by acting with dignity and courtesy to all those present in the courtroom. This, the respondent judge failed to do. The severity of his violation is not tampered by his allegation that the complainant himself contributed to the events that led to the respondent's show of temper. In *Juan dela Cruz (Concerned citizen of Legaspi City) v. Judge Ruben B. Carretas,* we had occasion to say: *"Equanimity and judiciousness should be the constant marks of a dispenser of justice. A judge should always keep his passion guarded. He can never allow it to run loose and overcome his reason x x x.* Similarly, in *Rowena v. Guanzon, et al. v. Judge Anastacio C. Rufon,* the Court declared –

> "*although respondent judge may attribute his intemperate language to human frailty, his noble position in the bench nevertheless demands from him courteous speech in and out of court. Judges are demanded to be always temperate, patient and courteous both in conduct and in language.*"

D E C I S I O N

BRION, *J.*:

Before us is the Complaint filed on April 12, 2006 by Atty. Antonio G. Cañeda (*complainant*) against Presiding Judge Eric F. Menchavez (*respondent*) of the Regional Trial Court (*RTC*), Branch 21, Cebu City, for violation of Section 6(3), Rule 140 of the Rules of Court in relation with Canons 2.01, 3.01 and 3.03 of the Code of Judicial Conduct for the Philippine Judiciary.[1]

The Antecedents

The complainant is the counsel of one of the defendants, Virginia Borromeo Guzman, in Civil Case No. CEB-30956, entitled *Roberto Borromeo, et al. v. Heirs of Juan Borromeo*, for judicial partition, pending with the respondent's RTC Branch 21. Lawyer Pepito C. Suello is complainant's collaborating counsel in the case. Both Ms. Guzman and Atty. Suello executed affidavits in connection with the complaint.[2]

It appears from the complaint and the supporting affidavits that the respondent called the partition case for hearing on December 14, 2005 at 11 o'clock in the morning. Due to be taken up was the motion to segregate the inheritance shares of one of the plaintiffs, Roberto Borromeo.

The respondent asked the complainant at the start of the hearing if the defendants he was representing were amenable to a partition. The complainant answered in the affirmative, subject to the conditions that the counsel for the plaintiffs would

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

[2] *Id.*, pp. 5-6 for Atty. Suello, and pp. 7-8 for Ms. Guzman.

withdraw a pending motion for reconsideration before the Supreme Court to clear one of the areas subject to partition of squatters, and would secure a writ of execution.

Atty. Delfin V. Nacua (*Atty. Nacua*), counsel for the plaintiffs, replied that he could not withdraw the motion before the Supreme Court. At this point, the respondent asked the complainant if he was amenable to segregate only the share of Roberto Borromeo. The complainant expressed reservations about it. Instead he advanced the idea that the parties talk to each other through mediation. The respondent thereupon blurted out "*never mind mediation, walay hinundan na (it's useless*)."

When the respondent checked on the progress of the case, the complainant remarked that it was being delayed because no proper summons (*by publication*) had been served on the defendants who were residing outside the country. The respondent reacted by angrily banging his gavel and shouting, "*I said no publication period*." He banged the gavel so hard that it broke, its head flying into the air and almost hitting complainant. The respondent then slammed the table with his hand and then went inside his chambers. After a while, he came back with a holstered handgun and smashed it on the table, as he angrily shouted at complainant, "*Unsay gusto nimo? Yawa! Gahig ulo*!" (*What do you want? Devil! Hardheaded*!)

A lawyer, also attending the hearing and who was near the respondent's table, moved for a recess. A member of the respondent's staff then gave him a glass of water. The complainant apologized for causing the temper of the respondent to rise, but the respondent ignored him and called for the next case. At that point, the complainant asked for permission to leave.

The complainant regarded the respondent's act of challenging him inside the courtroom in the presence of many people as an act of impropriety under Section 6(3), Rule 140 of the Rules of Court, in relation with the Code of Judicial Conduct, Canons 2.01, 3.01 and 3.03. The complainant maintained that the conduct of the respondent inside the court not only tarnished the name

of the judiciary he represents but constituted an insult to the law profession; that the respondent is not above the law; and that the gun is not an emblem of authority.

Additionally, complainant perceived the respondent to be biased in favor of the plaintiffs inasmuch as the respondent had been convincing him to agree to the plaintiffs' position.

In a 1st Indorsement dated April 24, 2006, the Office of the Court Administrator (*OCA*) referred the complaint to the respondent and required him to comment within ten (10) days from receipt of the indorsement. The OCA further required the respondent to comment on why no disciplinary action should be taken against him for violation of his professional responsibility.[3]

The respondent duly submitted his Comment dated May 18, 2006.[4] It was corroborated by the sworn statements of Atty. Nacua and Sandra A. Gloria (the court stenographer of RTC, Branch 21).[5]

The respondent explained that the complainant, while arguing at the hearing for his client, refused to stop talking even when signaled by the Court to stop. He told complainant that summons by publication was no longer proper because summons by personal service had already been effected on defendants. The complainant simply continued to argue and even became aggressive, belligerent and disrespectful, causing the respondent to flare up and bang his gavel.

The respondent denied that the gavel broke with its head almost hitting the complainant; the gavel is being used up to the present time and the complainant was never in danger of being hit. He simply refused to stop arguing until the atmosphere became so heated that one of the lawyers, Atty. Elias Espinosa, had to move for a recess. Thereupon, the respondent went inside his chambers, drank a glass of water to cool himself off,

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[3] *Rollo*, p. 9.

[4] *Id.*, pp. 10-15.

[5] *Id.*, pp. 16-17 for Atty. Nacua, and pp.19-20 for Ms. Gloria.

and reflected on what had just transpired. He sensed he had reason to fear for his life so he decided to equip himself with his licensed firearm and to place it on the table, preparing for the worst. He never pointed nor brandished the firearm at anyone, as it remained in its holster at all times.

The respondent likewise denied that he had smashed the gun on the table as it could fire or otherwise could have been damaged. After he asked complainant "*what do you want*?" the lawyer apologized for causing him to raise his voice and to blow his top. He ignored the complainant despite the apology and considered the incidents submitted for resolution.

The respondent also denied the allegation of bias, as allegedly shown by the offer of his chambers to the parties for possible amicable settlement talks. He did so because the parties are members of the same family and a settlement would have been the most beneficial solution. If he blew his top at all, he was led to it by the complainant's disrespect and discourtesy to the court. It was only upon seeing the gun that the complainant calmed down, behaved, and apologized to the court. He sincerely believed that under the circumstances, he employed the means necessary to maintain order in the court.

Complainant filed a reply dated June 8, 2006[6] to respondent's comment essentially reiterating the allegations of the complaint.

The OCA Report/Recommendation

In its submission dated August 25, 2006, the OCA found substantial evidence to support the conclusion that the respondent is administratively liable for conduct unbecoming a judge.[7] The OCA noted that the respondent admitted the following:

1. The aggressive, belligerent and disrespectful conduct of the complainant caused him to flare up or to blow his top and bang his gavel on the table; and

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[6] *Rollo*, pp. 50-52.

[7] Administrative Matter for Agenda.

2. He equipped himself with his gun by bringing it outside and placing it on the table, as he asked complainant, "*what do you want*?"

With the foregoing admissions, the OCA found credible the complainant's allegations that the respondent uttered such statements as "*never mind mediation, walay hinundan na" (it's useless), 'I said no publication period." "Yawa! Gahig ulo." (Devil, Hardheaded!)* in the course of his altercation with the complainant. It faulted the respondent for overstepping the norms of propriety demanded of a member of the bench by losing his cool and uttering intemperate language during the hearing. It opined that the belligerent, aggressive and disrespectful language of complainant was no excuse for what he said to the complainant.

The OCA also characterized as highly irresponsible and improper the respondent's acts of bringing his handgun into the courtroom, placing it on his table, and threateningly asking the complainant, "*what do you want*?" This reaction was uncalled for as the respondent has ample powers to address any hostile or unfriendly situation in his court.

The OCA recommended that the respondent be made liable for conduct unbecoming a judge and fined in the amount of ₱5,000.00, with a warning against the commission of the same or a similar infraction in the future.

The Court's Ruling

This case highlights the limits that a judge must observe in responding to situations he perceives to be abusive in his court.

What appears certain to us is that there were basic disagreements on approaches and issues in the partition case. In the courtroom, a lawyer makes submissions before a judge whose role is to hear and consider the submissions, and subsequently rule on the matter. It is not a situation where two equals, such as the opposing counsels, argue against each other. The respondent apparently had a misplaced concept of what a courtroom situation should ideally be, so that he was

effectively arguing with counsel as shown by his clearly contentious stance when he made his ruling. This was the respondent's first error; he should have coolly ruled and allowed counsel to respond to his ruling, instead of proceeding in a manner that invited further arguments. The complainant, however, also erred since he continued to argue despite the respondent's ruling. The respondent judge's response, under this situation, should have been to direct the complainant to wind up his arguments under pain of direct contempt if this warning would be disregarded. Thereafter, he could have declared the complainant in direct contempt if he persisted in his arguments. A direct contempt, of course, is not enforced by a judge's act of bringing out his weapon and asking counsel the direct question "What do you want?" This confrontational manner – shown usually in the western genre of movies – has no place in our present justice system. There are agents of the law, specifically, officers of the court and the police who can be called upon to implement contempt orders and restore order as needed.

Since the alternative recourses available to the respondent did not take place, we share the OCA's observation that the respondent overreacted in his handling of the situation before his court. Bringing out a gun for everyone present in the court to see, even for purposes of maintaining order and decorum in the court, is inexcusable in the absence of overt acts of physical aggression by a party before the court.

As the OCA aptly pointed out, the New Code of Judicial Conduct[8] requires "*(Judges) shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.*" and their "*behavior and conduct x x x must reaffirm the peoples' faith in the integrity of the judiciary.*"[9] The respondent violated this rule when, after a show of anger, he brought and openly displayed his gun on his courtroom table while hurling a confrontational

[8] *Adopting the New Code of Judicial Conduct for the Philippine Judiciary*, A.M. No. 03-05-01-SC, April 27, 2004.

[9] *Id.*, Sections 1 and 2, Canon 2.

question at the offending counsel. While the New Code of Judicial Conduct requires a magistrate to maintain order and decorum in the court,[10] the Code itself sets limits on how a judge should do this. Section 6, Canon 6 of the Code provides:

> 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. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

To reiterate, the judge himself must observe decorum by acting with dignity and courtesy to all those present in the courtroom. This, the respondent judge failed to do. The severity of his violation is not tampered by his allegation that the complainant himself contributed to the events that led to the respondent's show of temper.

In *Juan dela Cruz (Concerned citizen of Legazpi City) v. Judge Ruben B. Carretas*,[11] we had occasion to say: "*Equanimity and judiciousness should be the constant marks of a dispenser of justice. A judge should always keep his passion guarded. He can never allow it to run loose and overcome his reason x x x.*"

Similarly in *Rowena v. Guanzon, et al. v. Judge Anastacio C. Rufon*,[12] the Court declared—"*although respondent judge may attribute his intemperate language to human frailty, his noble position in the bench nevertheless demands from him courteous speech in and out of court. Judges are demanded to be always temperate, patient and courteous both in conduct and in language.*"

In view of the foregoing, we find the respondent liable for vulgar and unbecoming conduct defined under Section 10, Rule 140, as amended, of the Rules of Court as a light charge punishable by a fine of not less than ₱1,000.00 but not exceeding ₱10,000.00.

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[10] Rule 3, Canon 3.

[11] A.M. No. RTJ-07-2043, September 5, 2007.

[12] A.M. No. RTJ-07-2038, October 19, 2007.

In light of the severity of the respondent judge's transgression affecting as it does, not only the judge himself but his court and the image and reputation of the whole judiciary, we find the maximum fine of ₱10,000.00 to be merited.

WHEREFORE, premises considered, Judge *ERIC F. MENCHAVEZ,* of the Regional Trial Court, Branch 21, Cebu City, is hereby declared *LIABLE* for vulgar and unbecoming conduct as a judge. Accordingly, a fine of ₱10,000.00 is imposed upon him with a *WARNING* that a repetition of the same or similar infraction will be dealt with more severely. The complainant is given the *ADMONITION* that in representing his clients, he should ever be mindful of the respect due to the court and avoid actions bordering on disrespect.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Nachura,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 139672. March 4, 2009]

GREGORIO ARANETA UNIVERSITY FOUNDATION, *petitioner, vs.* **THE REGIONAL TRIAL COURT OF KALOOKAN CITY, BRANCH 120, REGISTER OF DEEDS OF KALOOKAN CITY, NATIONAL HOUSING AUTHORITY, HEIRS OF GREGORIO BAJAMONDE AND SATURNINA MENDOZA, and THE REMINGTON REALTY DEVELOPMENT, INC.,** *respondents.*

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[*] Designated additional member of the Second Division per Special Order No. 571 dated February 12, 2009.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ACTION WHICH IS DEEMED AN ATTACK ON A TITLE, DEFINED; DIRECT AND INDIRECT OR COLLATERAL ATTACK, DISTINGUISHED. — An action or proceeding is deemed an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, it is indirect or collateral when, in an action or proceeding to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.

2. CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; RULE ON INDEFEASIBILITY OF TITLE; INAPPLICABLE TO TITLES SECURED BY FRAUD AND MISREPRESENTATION. — The rule that a title issued under the Torrens System is presumed valid and, hence, is the best proof of ownership does not apply where the very certificate itself is faulty as to its purported origin, as in the present case. x x x Well-settled is the rule that the indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. In view of these circumstances, it was as if no title at all was ever issued in this case to the petitioner and therefore this is hardly the occasion to talk of collateral attack against a title.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IF THE COURT HAS JURISDICTION OVER THE SUBJECT MATTER AND THE PERSON OF THE PARTIES, ITS RULING UPON ALL QUESTIONS INVOLVED ARE MERE ERRORS OF JUDGMENT REVIEWABLE BY APPEAL; CASE AT BAR. — Case law teaches that if the court has jurisdiction over the subject matter and the person of the parties, its ruling upon all questions involved are mere errors of judgment **reviewable by appeal**. Any error in the judgment of the trial court should have been raised by petitioner through appeal by way of a petition for review with the CA. Having failed to file such an appeal, petitioner cannot anymore question the final and executory order, in a **petition for annulment** with the CA, as petitioner did in this case.

4. ID.; ID.; ID.; PETITION FOR REVIEW UNDER RULE 45; LIMITED TO REVIEW ON LEGAL ISSUES UNLESS EXCEPTIONAL CIRCUMSTANCES EXIST TO WARRANT A

REVIEW OF THE FACTS. — It is elementary that in a petition for review under Rule 45 only legal, not factual, issues may be raised before this Court unless exceptional circumstances exist to warrant a review of the facts.

5. ID.; ID.; ANNULMENT OF JUDGMENT; GROUNDS. — Rule 47 of the Revised Rules of Civil Procedure permits annulment of judgment only on two (2) grounds, to wit: (a) that the judgment sought to be annulled is void for want of jurisdiction or lack of due process of law; or (b) that it has been obtained by fraud, neither of which obtain herein.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo and Lee for petitioner.
Emilio C. Capulong, Jr. for Heirs of Gregorio Bajamonde and Saturnina Mendoza.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review under Rule 45 of the Rules of Court, herein petitioner Gregorio Araneta University Foundation (GAUF) assails and seeks to set aside the Decision[1] dated March 31, 1999 of the Court of Appeals (CA) in *CA-G.R. SP No. 23872* and its Resolution[2] of August 16, 1999, denying petitioner's motion for reconsideration.

The assailed decision upheld the **Joint Order**[3] **dated August 29, 1986** and the **Order**[4] **dated December 23, 1988** of the

[1] Penned by Associate Justice Bernardo P. Abesamis (now ret.), with Associate Justice Jainal D. Rasul (now ret.), and then Associate Justice Conchita Carpio Morales, now a member of this Court, concurring; *rollo*, pp. 42-57.

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

[3] *Id*. at 81-84.

[4] *Id*. at 106.

Regional Trial Court (RTC) of Caloocan City, Branch 120, in Civil Case No. C-760 which, among others, directed the cancellation of GAUF's Transfer Certificate of Title (TCT) No. C-24153 and the issuance in lieu thereof of new titles in the name of the respondent Heirs of Gregorio Bajamonde over Lots 54 and 75 of the *Gonzales Estate*.

The factual antecedents as found by the CA are quoted hereunder:

> By virtue of a decision rendered on March 29, 1950 by the then Court of First Instance of Rizal in Civil Case No. 131 and affirmed by the Supreme Court on May 14, 1954, in G.R. No. L-4918, the Gonzales or Maysilo estate in Malabon, Rizal, with an area of 871,982 square meters and covered by TCT No. 35487, was expropriated by the Republic of the Philippines, with the understanding that the Government would resell the property to its occupants.
>
> In view of the failure of the Government and its instrumentality, then Rural Progress Administration and later the People's Homesite and Housing Corporation (PHHC), to implement the decision in Civil Case No. 131, the occupants and tenants of the estate filed on October 20, 1960, a complaint in Civil Case No. 6376 (now Civil Case No. C-760) with the then Court of First Instance of Rizal (Pasig Branch) to compel PHHC to sell to the tenants their respective occupied portions of the Gonzales estate.
>
> On April 29, 1961, the then Araneta Institute of Agriculture, now Gregorio Araneta University Foundation (GAUF) sought to intervene in Civil Case No. 6376 (Civil Case No. C-760) on the ground that 52 tenants of the property and Araneta Institute of Agriculture entered into an agreement or "*Kasunduan*" whereby the former conveyed to the latter their priority rights to purchase portion of the estate with an area of 507,376 square meters.
>
> On the basis of this "*Kasunduan*," a compromise agreement dated November 28, 1961 was submitted in Civil Case No. 6376 (Civil Case No. C-760) which was duly approved by the court. Included in this compromise agreement are Lots 75 and 54 awarded to Gregorio Bajamonde.

xxx xxx xxx

Incidentally, it appears that on the basis of the "*Kasunduan*" and the forged compromise, Araneta University was able to register in its name with the Register of Deeds of Caloocan City Transfer Certificate of Title No. C-24153 for Lots 75 and 54 which as adverted to above, had been awarded to Gregorio Bajamonde.

However, in Civil Cases Nos. 17347 and 17364, both of the then Court of First Instance of Rizal, the compromise agreement entered into by and between Araneta University and the tenants on November 28, 1961 was declared null and void for being a forgery, and the partial decision rendered in accordance therewith was likewise declared null and void and of no force and effect.

On appeal to the Court of Appeals in CA-G.R. No. 45330-R the appellate court sustained the nullity of the "*Kasunduan*" and the compromise agreement in accordance thereto. xxx.

Thus, on motion by the heirs of Gregorio Bajamonde, the lower court in Civil Case No. C-760 issued the order dated August 29, 1986:

(1) Declaring that any transfer or conveyance of Lots 75 and 54 or any purpose thereof from Gregorio Bajamonde to Araneta Institute of Agriculture or Gregorio Araneta University Foundation, or their assignee or successors-in-interest as rescinded, and to restore said Lots 75 and 54 to the real owners, Gregorio Bajamonde and/or heirs;

(2) Ordering the Register of Deeds of Caloocan City to cancel TCT No. C-24153 issued in the name of Gregorio Araneta University Foundation and to issue a new Transfer Certificate of Title over Lots 75 and 54 in the name of Gregorio Bajamonde or heirs;

(3) Ordering the Clerk of Court to issue writ of possession in favor of Gregorio Bajamonde or heirs.

And then on May 27, 1988 the lower court issued the order for issuance of a writ of execution for the enforcement of the joint order dated August 29, 1986, with a restraining order against Nonong Ridad, Graciano Napbua, Sergio Yeban, Gavino Miguel, Angel Cabrera and nine other persons, and their agents or representatives from squatting, occupying, staying and taking possession of Lots 75 and 54, or any portions thereof, including all the improvements and structures existing thereon.

GAUF Personnel Homeowners Association, Inc., *et al.* assailed the said order *via* a petition for *certiorari*, injunction and restraining order in this Court, docketed as CA-G.R. SP No. 14839, which was however dismissed for lack of merit in a decision promulgated by this Court on June 29, 1989. A petition for review filed with the Supreme Court, docketed as G.R. No. 89969 was likewise denied with finality on February 19, 1990.

Meanwhile, on December 23, 1988, respondent Judge Arturo Romero issued in Civil Case No. 6376 (now Civil Case No. C-760) an order for the execution of the aforesaid joint order dated August 29, 1986.

Eventually, (in compliance with the joint order dated December 23, 1988), TCT No. C-24153 for Lots 75 and 54 in the name of Araneta University was cancelled and TCT No. 174672 for Lot 75 and TCT No. 174671 for Lot 54 were issued by the Register of Deeds of Caloocan City on December 27, 1988 to the rightful owner thereof, Gregorio Bajamonde.

On June 29, 1989, the heirs of Bajamonde sold a portion of Lot 54 consisting of 7,685 square meters to the herein other respondent, Remington Realty Development, Inc.[5]

On January 14, 1991, GAUF filed with the CA a petition for annulment[6] of the aforementioned Joint Order dated August 29, 1986 and the Order dated December 23, 1988. In its petition, docketed as CA-G.R. SP No. 23872, GAUF essentially alleged that the twin orders in question were issued by the trial court without jurisdiction as the same constituted a collateral attack on its certificate of title (TCT No. C-24153) in violation of Section 48 of Presidential Decree No. 1529 (P.D. 1529),[7] otherwise known as the *Property Registration Decree*.

In the herein challenged decision dated March 31, 1999, the appellate court denied the petition for annulment. In explanation of the denial, the CA ruled as follows:

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[5] CA *rollo*, p. 11.

[6] *Id.* at 2-18.

[7] Sec. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

It may not be remiss to state that by virtue of the "*Kasunduan*" which was submitted in Civil Case No. 6376 (now Civil Case No. C-760), GAUF was able to register in its name with the Register of Deeds of Caloocan City TCT No. C-24153 for Lots 75 and 54 which had been awarded to Gregorio Bajamonde. However, in Civil Cases Nos. 17347 and 17364, the said "*Kasunduan*" or compromise agreement was declared null and void for being a forgery. Such ruling was appealed to the Court of Appeals, CA-G.R. No. 45330-R which affirmed the decision rendered in Civil Cases Nos. 17347 and 17634. Correspondingly, xxx, *the finality of the orders impugned in the present petition cannot be therefore disturbed without impugning likewise the finality of the orders rendered in Civil Cases Nos. 17347 and 17364 rendered by the then Court of First Instance of Rizal and affirmed likewise by this Court in CA-G.R. No. 45330-R in a decision promulgated on February 7, 1973*.

It clearly appears that the basis of respondent judge in issuing the questioned order is the declared nullity of the "*Kasunduan*." It was in Civil Case No. 6376 (now Civil Case No. C-760) where the nullified "*Kasunduan*" was submitted by the petitioner and the private respondents herein; it was in the same case where, by virtue of the said "*Kasunduan*,"petitioner GAUF was able to register in its name with the Register of Deeds of Caloocan City TCT No. C-24153 for Lots 54 and 75 which had been awarded to Gregorio Bajamonde. Accordingly, it is also in the same case and court where the cancellation should be sought as a result of the nullity of the "*Kasunduan*."

With its motion for reconsideration having been denied by the CA in its resolution of August 16, 1999, petitioner GAUF is now before this Court *via* the instant recourse submitting for our consideration the following arguments:

1. THE JOINT ORDER OF AUGUST 29, 1986 AND THE DECEMBER 23, 1988 ORDER OF THE RESPONDENT REGIONAL TRIAL COURT ARE NULL AND VOID *AB INITIO* FOR LACK OF JURISDICTION BECAUSE IT (SIC) AMENDED THE ALREADY FINAL AND EXECUTORY ORDER OF JULY 19, 1978 DISMISSING AND GRANTING THE WITHDRAWAL OF THE COMPLAINT IN CIVIL CASE NO. C-474 OF THE THEN CFI OF RIZAL FILED BY THE DECEASED GREGORIO BAJAMONDE;

2. THE RESPONDENT REGIONAL TRIAL COURT HAS NO JURISDICTION TO CANCEL PETITIONER GAUF'S TCT NO. C-24153 IN THE HEARING OF THE *OMNIBUS MOTION* DATED MAY 12, 1986 AND *MANIFESTATION AND MOTION* DATED JULY 1, 1986 OF THE HEIRS OF GREGORIO BAJAMONDE. THE SAID PROCEEDINGS CONSTITUTE A COLLATERAL ATTACK ON PETITIONER'S TCT NO. C-24153 WHICH IS PROHIBITED BY SECTION 48 OF P.D. NO. 1529, OTHERWISE KNOWN AS THE *PROPERTY REGISTRATION DECREE*;

3. "A VOID JUDGMENT MAY BE ASSAILED OR IMPUGNED AT ANY TIME" [*ZAIDE, JR. VS. COURT OF APPEALS, 184 SCRA 531*];

4. THE RULING OF THE COURT OF APPEALS THAT THE ISSUES RAISED IN THE PETITION TO ANNUL JUDGMENT ARE ALLEGEDLY BARRED BY THE RULE OF *RES JUDICATA* IS CONTRARY TO LAW. THE SUPPOSED RULINGS IN CIVIL CASE NOS. 17347 AND 17364, AS WELL AS THE RULING IN CA-G.R. NO. 45330-R DO NOT BAR THE PETITION TO ANNUL JUDGMENT.[8]

Fundamentally, petitioner's arguments center on the question of whether or not the trial court has jurisdiction to issue the **Joint Order dated August 29, 1986** and **December 23, 1988 Order**, which directed the cancellation of the petitioner's title over Lots 54 and 75 of the former *Gonzales /Maysilo Estate* and ordered the issuance of new titles over the same lots in the name of the Heirs of Gregorio Bajamonde.

It is the petitioner's thesis that the orders in question directing the cancellation of its TCT No. 24153 constituted a collateral attack on its title, a course of action prohibited by Section 48 of P. D. No. 1529 because said orders were issued in connection with Civil Case No. C-760, a suit for specific performance and damages and not a direct proceeding for the cancellation of its title. On this premise, petitioner argues that the trial court is bereft of jurisdiction to issue the disputed orders.

We find the present petition unmeritorious.

An action or proceeding is deemed an attack on a title when the object of the action is to nullify the title, and thus challenge

[8] *Id*. at 27.

the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, it is indirect or collateral when, in an action or proceeding to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[9]

Here, while it may be true that Civil Case No. C-760 was originally an action for specific performance and damages, nonetheless the case cannot constitute a collateral attack on the petitioner's title which, to begin with, was irregularly and illegally issued. It bears stressing that the source of GAUF's title was the Compromise Agreement purportedly executed by Gregorio Bajamonde, *et al.* on November 28, 1961. This Compromise Agreement was approved by the trial court in Civil Case No. C-760 in its Partial Decision dated December 23, 1961. As petitioner's own evidence shows, the subject property was conveyed to it in compliance with and in satisfaction of the said Partial Decision in Civil Case No. C-760 and the writ of execution issued in connection therewith.[10] The same Compromise Agreement and Partial Decision, however, were declared null and void in Civil Cases Nos. 17347 and 17364 and likewise effectively invalidated in *CA-G.R. No. 45330-R.*[11] The rule that a title issued under the Torrens System is presumed valid and, hence, is the best proof of ownership does not apply where the very certificate itself is faulty as to its purported origin,[12] as in the present case.

With the reality that the presumption of authenticity and regularity enjoyed by the petitioner's title has been overcome and overturned by the aforementioned decisions nullifying the aforesaid Compromise Agreement from whence the petitioner's

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[9] *Mallilin, Jr. v. Castillo*, G.R. No. 136803, June 16, 2000, 333 SCRA 628, 640.

[10] Deed of Conveyance, Annex G, CA Petition, CA *rollo*, p. 46.

[11] *Id.* at 331-344.

[12] *Dolfo v. Register of Deeds for the Province of Cavite*, G.R. No. 133465, September 25, 2000, 341 SCRA 58.

title sprung, that title can never be indefeasible as its issuance was replete with badges of fraud and irregularities that rendered the same nugatory. Well-settled is the rule that the indefeasibility of a title does not attach to titles secured by fraud and misrepresentation.[13] In view of these circumstances, it was as if no title at all was ever issued in this case to the petitioner and therefore this is hardly the occasion to talk of collateral attack against a title.

We agree with the CA that the trial court in Civil Case No. C-760 had jurisdiction to annul petitioner's title. It must be emphasized that, notwithstanding the original denomination of the said action as one for specific performance and damages, it was petitioner GAUF no less which sought to intervene in Civil Case No. C-760 and claimed that it has rights or interests in the subject matter being litigated therein. GAUF **voluntarily submitted** in Civil Case No. C-760 the purported "*Kasunduan*" which, in turn, became the basis of the Compromise Agreement and the Partial Decision dated December 23, 1961. It is undeniable that petitioner's TCT No. C-24153 was issued in enforcement or execution of a partial decision in Civil Case No. C-760. As it were, the validity of petitioner's title was an issue litigated in Civil Case No. C-760 on account of the presentation therein of the Compromise Agreement which, to stress, was the springboard of petitioner's title. Hence, when that same Compromise Agreement and the Partial Decision in connection therewith were eventually nullified, the trial court acted very much within its jurisdiction in ordering the cancellation of petitioner's title in the same Civil Case No. C-760.

Lest it be forgotten, it was likewise petitioner itself and/or its privies or assignees which instituted numerous petitions relative to the validity/enforceability of the Compromise Agreement and the Partial Decision and the validity of petitioner's certificate of title. In fact, in one of those petitions, the appellate court ordered the trial court to hear and pass upon **all unresolved incidents** in Civil Case No. C-760, including motions assailing the Compromise Agreement and the Partial Decision upon which petitioner's

[13] *Baguio v. Republic*, G.R. No. 119682, January 21, 1999, 301 SCRA 450, 457.

title was based.[14] Clearly then, when the trial court granted respondent heirs' *Omnibus Motion* and *Motion to Vest Title* in its assailed Joint Order of August 29, 1986 and Order dated December 23, 1988, respectively, that court was unquestionably exercising its jurisdiction to hear and resolve those incidents pursuant to the appellate court's directive.

With the above, petitioner's challenge with respect to the jurisdictional competence of the trial court to order the cancellation of its certificate of title in Civil Case No. C-760 must simply collapse. Quite the contrary, the trial court having acquired jurisdiction not only over the subject matter of the case but also over the parties thereto, it was unnecessary to institute a separate action to nullify petitioner's title. Having voluntarily submitted itself to the jurisdiction of the trial court through the process of intervention, it is rather too late in the day for the petitioner to now turn its back and disclaim that jurisdiction, more so where, as here, an adverse judgment has already been rendered against it. Case law teaches that if the court has jurisdiction over the subject matter and the person of the parties, its ruling upon all questions involved are mere errors of judgment **reviewable by appeal**.[15] Any error in the judgment of the trial court should have been raised by petitioner through appeal by way of a petition for review with the CA. Having failed to file such an appeal, petitioner cannot anymore question the final and executory order, in a **petition for annulment** with the CA, as petitioner did in this case.

Interestingly, in its present petition for review, GAUF concede the various decisions which have declared the Compromise Agreement and the Partial Decision void but argues that the annulment of the Compromise Agreement will not affect the validity of petitioner's TCT No. C-24153 on the ground that GAUF's title was allegedly not issued by virtue of the Compromise Agreement but rather the purported withdrawal by Gregorio Bajamonde of his complaint in Civil Case No. C-474 which was an action for annulment of the Compromise Agreement dated November 28,

[14] CA *rollo*, pp. 378-384.

[15] *Lapulapu Development & Housing Corp. v. Risos*, G.R. No. 118633, September 6, 1996, 261 SCRA 517, 525.

1961. We cannot agree with petitioner's opinion on this point. The fact still remains that the ultimate source of petitioner's right to Lots 54 and 75 is the voided Compromise Agreement.

In any event, the purported withdrawal of Civil Case No. C-474 and the authenticity of the amicable settlement attached to the present petition are factual issues improperly and belatedly raised in this appeal. It is elementary that in a petition for review under Rule 45 only legal, not factual, issues may be raised before this Court unless exceptional circumstances exist to warrant a review of the facts.[16] A perusal of the GAUF's petition filed with the CA would also show that the alleged valid amicable settlement of Civil Case No. C-474 was not raised therein as a ground for the annulment of the **Joint Order dated August 29, 1986** and **December 23, 1988 Order**. Petitioner is, therefore, precluded from raising this argument for the first time on appeal. All in all, we find no reason to disturb the trial court's finding that:

> Even on the assumptions that the void "Compromise Agreement" dated November 28, 1961 and the subsequent Amicable Settlement dated July 13, 1978 between the intervenor and Gregorio Bajamonde or heirs were both valid, the tenants, particularly Gregorio Bajamonde or heirs, have all the rights (sic) to regard as rescinded the said two (2) agreements by reason of the consistent refusals or failures of the intervenor to fully comply with or to abide with its obligations or commitments to the affected tenants.
>
> xxx xxx xxx
>
> On the part of the Intervenor, it cannot insist on the enforcement of the terms and conditions of the Amicable Settlement dated July 13, 1978 against the tenant Gregorio Bajamonde or heir over Lots 75 and 54 of the Gonzales Estate because it was not judicially approved by this Court nor by other competent courts and that it was also regarded as rescinded by the heirs of Gregorio Bajamonde.[17]

In light of the foregoing, this Court is inclined to believe that the instant petition was a last-ditch effort on the part of petitioner

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[16] *Professional Academic Plans, Inc. v. Crisostomo,* G.R. No. 148599, March 14, 2005, 453 SCRA 342, 353.

[17] Order dated August 29, 1986 at p. 2, CA *rollo*, p. 82.

GAUF to secure a reversal of the final and executory orders of the trial court in Civil Case No. C-760. However, and as correctly pointed out by the CA in the decision under review, Rule 47 of the Revised Rules of Civil Procedure[18] permits annulment of judgment only on two (2) grounds, to wit: (a) that the judgment sought to be annulled is void for want of jurisdiction or lack of due process of law; or (b) that it has been obtained by fraud, neither of which obtain herein.

In closing, let it be mentioned that a writ of execution for the enforcement of the assailed August 29, 1986 Joint Order had already been issued by the trial court in its Order of May 27, 1988, which Order was upheld by the CA in *CA-G.R. SP No. 14839*[19] and ultimately by this Court no less in *G.R. No. 89969*.[20] Petitioner, its privies, assignees and/or successors in interest are bound by these final and executory decisions and orders. For this Court now to annul the Joint Order is for it to vacate its Resolution in G.R. No. 89969. The policy of judicial stability, not to mention the confusion such course of action would entail in the speedy administration of justice simply dictates the rejection of petitioner's legal maneuverings to avoid the consequences of adverse decisions and orders that have long become final and executory.

IN VIEW WHEREOF, the instant petition is *DENIED* and the assailed decision dated March 31, 1999 of the Court of Appeals and its resolution dated August 16, 1999 in *CA-G.R. SP No. 23872* are hereby *AFFIRMED*.

Costs against the petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Brion,*[*] *JJ.,* concur.

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[18] Section 2. *Grounds for Annulment*. – The annulment may be based only on grounds of extrinsic fraud and lack of jurisdiction.

[19] CA *rollo*, pp. 385-391.

[20] *GAUF Personnel Homeowners Association, et al. v. The Honorable Court of Appeals,* January 15, 1990.

[*] Additional Members as per Special Order No. 570.

THIRD DIVISION

[G.R. No. 145736. March 4, 2009]

ESTATE OF ORLANDO LLENADO and WENIFREDA T. LLENADO, in her capacity as (a) Administratrix of the Estate of Orlando A. Llenado and (b) Judicial Guardian of the Minor children of Orlando A. Llenado, and (c) in her Own behalf as the Surviving Spouse and Legal Heir of Orlando A. Llenado, *petitioners, vs.* **EDUARDO LLENADO, JORGE LLENADO, FELIZA GALLARDO *VDA. DE* LLENADO and REGISTER OF DEEDS of Valenzuela City, Metro Manila,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR. — Petitioner contends that the heirs of Orlando are entitled to the rights of a tenant under Republic Act (R.A.) No. 1162, as amended by R.A. No. 3516. The right of first refusal or preferential right to buy the leased premises is invoked pursuant to Section 5 of said law and this Court's ruling in *Mataas Na Lupa Tenants Association, Inc. v. Dimayuga*. This issue is being raised for the first time on appeal. True, in *Mataas Na Lupa Tenants Association, Inc.*, the Court explained that Section 1 of R.A. No. 1162, as amended by R.A. No. 3516, authorizes the expropriation of any piece of land in the City of Manila, Quezon City and suburbs which have been and are actually being leased to tenants for at least 10 years, provided said lands have at least 40 families of tenants thereon. Prior to and pending the expropriation, the tenant shall have a right of first refusal or preferential right to buy the leased premises should the landowner sell the same. However, compliance with the conditions for the application of the aforesaid law as well as the qualifications of the heirs of Orlando to be beneficiaries thereunder were never raised before the trial court, or even the

Court of Appeals, because petitioner solely anchored its claim of ownership over the subject lot on the alleged violation of the prohibitory clause in the lease contract between Cornelio and Orlando, and the alleged non-performance of the right of first refusal given by Cornelio to Orlando. The rule is settled, impelled by basic requirements of due process, that points of law, theories, issues and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court as they cannot be raised for the first time on appeal. As the issue of the applicability of R.A. No. 1162, as amended, was neither averred in the pleadings nor raised during the trial below, the same cannot be raised for the first time on appeal.

2. CIVIL LAW; SPECIAL CONTRACTS; LEASE; GENERALLY TRANSMISSIBLE TO THE HEIRS OF THE LESSOR OR LESSEE. — Under Article 1311 of the Civil Code, the heirs are bound by the contracts entered into by their predecessors-in-interest except when the rights and obligations therein are not transmissible by their nature, by stipulation or by provision of law. A contract of lease is, therefore, generally transmissible to the heirs of the lessor or lessee. It involves a property right and, as such, the death of a party does not excuse non-performance of the contract. The rights and obligations pass to the heirs of the deceased and the heir of the deceased lessor is bound to respect the period of the lease. The same principle applies to the option to renew the lease. As a general rule, covenants to renew a lease are not personal but will run with the land. Consequently, the successors-in-interest of the lessee are entitled to the benefits, while that of the lessor are burdened with the duties and obligations, which said covenants conferred and imposed on the original parties.

3. ID.; ID.; ID.; THE OPTION TO RENEW IS AN ENFORCEABLE RIGHT, BUT IT MUST NECESSARILY BE FIRST EXERCISED TO BE GIVEN EFFECT. — While the option to renew is an enforceable right, it must necessarily be first exercised to be given effect. As the Court explained in *Dioquino v. Intermediate Appellate Court*: "A clause found in an agreement relative to the renewal of the lease agreement at the option of the lessee gives the latter an enforceable right to renew the contract in which the clause is found for such time as provided for. The agreement is understood as being in favor of the lessee,

and the latter is authorized to renew the contract and to continue to occupy the leased property *after notifying the lessor to that effect*. A lessor's covenant or agreement to renew gives a privilege to the tenant, but is nevertheless an executory contract, and until the tenant has exercised the privilege by way of some affirmative act, he cannot be held for the additional term. In the absence of a stipulation in the lease requiring notice of the exercise of an option or an election to renew to be given within a certain time before the expiration of the lease, which of course, the lessee must comply with, the general rule is that a lessee must exercise an option or election to renew his lease and *notify the lessor thereof before, or at least at the time of the expiration of his original term*, unless there is a waiver or special circumstances warranting equitable relief. There is no dispute that in the instant case, the lessees (private respondents) were granted the option to renew the lease for another five (5) years after the termination of the original period of fifteen years. Yet, there was never any positive act on the part of private respondents before or after the termination of the original period to show their exercise of such option. The silence of the lessees after the termination of the original period cannot be taken to mean that they opted to renew the contract by virtue of the promise by the lessor, as stated in the original contract of lease, to allow them to renew. Neither can the exercise of the option to renew be inferred from their persistence to remain in the premises despite petitioners' demand for them to vacate. x x x."

4. ID.; ID.; SALES; RIGHT OF FIRST REFUSAL; MAY BE PROVED BY PAROLE EVIDENCE. — The question as to whether a right of first refusal may be proved by parole evidence has been answered in the affirmative by this Court in *Rosencor Development Corporation v. Inquing*: "We have previously held that not all agreements "affecting land" must be put into writing to attain enforceability. Thus, we have held that the setting up of boundaries, the oral partition of real property, and an agreement creating a right of way are not covered by the provisions of the statute of frauds. The reason simply is that these agreements are not among those enumerated in Article 1403 of the New Civil Code. A right of first refusal is not among those listed as unenforceable under the statute of frauds. Furthermore, the application of Article 1403, par. 2(e) of the New Civil Code presupposes the existence of a perfected, albeit unwritten, contract of sale. A right of first refusal,

such as the one involved in the instant case, is not by any means a perfected contract of sale of real property. At best, it is a contractual grant, not of the sale of the real property involved, but of the right of first refusal over the property sought to be sold. It is thus evident that the statute of frauds does not contemplate cases involving a right of first refusal. As such, a right of first refusal need not be written to be enforceable and may be proven by oral evidence."

APPEARANCES OF COUNSEL

Celso A. Fernandez for petitioners.
Leovillo C. Agustin Law Offices for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the May 30, 2000 Decision[1] of the Court of Appeals in CA-G.R. CV No. 58911 which reversed the May 5, 1997 Decision[2] of the Regional Trial Court of Valenzuela City, Branch 75 in Civil Case No. 4248-V-93, and the October 6, 2000 Resolution[3] which denied the motion for reconsideration. The appellate court dismissed for lack of merit the complaint for annulment of deed of conveyance, title and damages filed by petitioner against herein respondents.

The subject of this controversy is a parcel of land denominated as Lot 249-D-1 (subject lot) consisting of 1,554 square meters located in Barrio Malinta, Valenzuela, Metro Manila and registered in the names of Eduardo Llenado (Eduardo) and

[1] *Rollo*, pp. 29-39; penned by Presiding Justice Salome A. Montoya and concurred in by Associate Justices Romeo J. Callejo, Sr. (later a member of this Court) and Martin S. Villarama, Jr.

[2] *Id.* at 53-67; penned by Judge Jaime F. Bautista.

[3] *Id*. at 52; penned by Presiding Justice Salome A. Montoya and concurred in by Associate Justices Romeo J. Callejo, Sr. (later a member of this Court) and Martin S. Villarama, Jr.

Jorge Llenado (Jorge) under Transfer of Certificate of Title (TCT) No. V-1689.[4] The subject lot once formed part of Lot 249-D owned by and registered in the name of their father, Cornelio Llenado (Cornelio), under TCT No. T-16810.

On December 2, 1975, Cornelio leased Lot 249-D-1 to his nephew, Romeo Llenado (Romeo), for a period of five years, renewable for another five years at the option of Cornelio. On March 31, 1978, Cornelio, Romeo and the latter's cousin Orlando Llenado (Orlando) executed an Agreement[5] whereby Romeo assigned all his rights to Orlando over the unexpired portion of the aforesaid lease contract. The parties further agreed that Orlando shall have the option to renew the lease contract for another three years commencing from December 3, 1980, up to December 2, 1983, renewable for another four years or up to December 2, 1987, and that "during the period that [this agreement] is enforced, the x x x property cannot be sold, transferred, alienated or conveyed in whatever manner to any third party."

Shortly thereafter or on June 24, 1978, Cornelio and Orlando entered into a Supplementary Agreement[6] amending the March 31, 1978 Agreement. Under the Supplementary Agreement, Orlando was given an additional option to renew the lease contract for an aggregate period of 10 years at five-year intervals, that is, from December 3, 1987 to December 2, 1992 and from December 3, 1992 to December 2, 1997. The said provision was inserted in order to comply with the requirements of Mobil Philippines, Inc. for the operation of a gasoline station which was subsequently built on the subject lot.

Upon the death of Orlando on November 7, 1983, his wife, Wenifreda Llenado (Wenifreda), took over the operation of the gasoline station. Meanwhile, on January 29, 1987, Cornelio sold Lot 249-D to his children, namely, Eduardo, Jorge, Virginia

[4] This lot was later subdivided into three smaller lots under TCT Nos. V-9438, V-9439, and V-9440.

[5] Exhibit "F", records, pp. 176-179.

[6] Exhibit "G", records, pp. 180-181.

and Cornelio, Jr., through a deed of sale, denominated as "*Kasulatan sa Ganap Na Bilihan*,"[7] for the sum of ₱160,000.00. As stated earlier, the subject lot, which forms part of Lot 249-D, was sold to Eduardo and Jorge, and titled in their names under TCT No. V-1689. Several months thereafter or on September 7, 1987, Cornelio passed away.

Sometime in 1993, Eduardo informed Wenifreda of his desire to take over the subject lot. However, the latter refused to vacate the premises despite repeated demands. Thus, on September 24, 1993, Eduardo filed a complaint for unlawful detainer before the Metropolitan Trial Court of Valenzuela, Metro Manila against Wenifreda, which was docketed as Civil Civil Case No. 6074.

On July 22, 1996, the Metropolitan Trial Court rendered its Decision in favor of Eduardo and ordered Wenifreda to: (1) vacate the leased premises; (2) pay Eduardo reasonable compensation for the use and occupation of the premises plus attorney's fees, and (3) pay the costs of the suit.

Wenifreda appealed to the Regional Trial Court of Valenzuela, Metro Manila, which reversed the decision of the court *a quo*. Thus, Eduardo appealed to the Court of Appeals which rendered a Decision[8] on March 31, 1998 reversing the decision of the Regional Trial Court and reinstating the decision of the Metropolitan Trial Court. It also increased the amount of reasonable compensation awarded to Eduardo for the use of the leased premises. Wenifreda's appeal to this Court, docketed as G.R. No. 135001, was dismissed in a Resolution[9] dated December 2, 1998. Accordingly, an Entry of Judgment[10] was made in due course on July 8, 1999.

Previously, after Eduardo instituted the aforesaid unlawful detainer case on September 24, 1993, herein petitioner Wenifreda, in her capacity as administratrix of the estate of

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[7] Exhibit "O", records, pp. 192-194.

[8] *Rollo*, pp. 212-224.

[9] *Id.* at 226-227.

[10] *Id.* at 231-232.

Orlando Llenado, judicial guardian of their minor children, and surviving spouse and legal heir of Orlando, commenced the subject Complaint,[11] later amended, on November 10, 1993 for annulment of deed of conveyance, title and damages against herein respondents Eduardo, Jorge, Feliza Llenado (mother of the Llenado brothers), and the Register of Deeds of Valenzuela, Metro Manila. The case was docketed as Civil Case No. 4248-V-93 and raffled to Branch 75 of the Regional Trial Court of Valenzuela, Metro Manila.

Petitioner alleged that the transfer and conveyance of the subject lot by Cornelio in favor of respondents Eduardo and Jorge, was fraudulent and in bad faith considering that the March 31, 1978 Agreement provided that while the lease is in force, the subject lot cannot be sold, transferred or conveyed to any third party; that the period of the lease was until December 3, 1987 with the option to renew granted to Orlando; that the subject lot was transferred and conveyed to respondents Eduardo and Jorge on January 29, 1987 when the lease was in full force and effect making the sale null and void; that Cornelio verbally promised Orlando that in case he (Cornelio) decides to sell the subject lot, Orlando or his heirs shall have first priority or option to buy the subject lot so as not to prejudice Orlando's business and because Orlando is the owner of the property adjacent to the subject lot; and that this promise was wantonly disregarded when Cornelio sold the said lot to respondents Jorge and Eduardo.

In their Answer,[12] respondents Eduardo and Jorge claimed that they bought the subject lot from their father, Cornelio, for value and in good faith; that the lease agreement and its supplement were not annotated at the back of the mother title of the subject lot and do not bind them; that said agreements are personal only to Cornelio and Orlando; that the lease expired upon the death of Orlando on November 7, 1983; that they were not aware of any verbal promise to sell the subject lot granted by Cornelio to Orlando and, even if there was, said option to buy is unenforceable under the statute of frauds.

[11] Records, pp. 1-8.

[12] *Id.* at 85-92.

After the parties presented their respective evidence, the Regional Trial Court rendered judgment on May 5, 1997 in favor of petitioner, *viz*:

WHEREFORE, PREMISES CONSIDERED, this Court finds the [petitioner's] civil action duly established by preponderance of evidence, renders judgment (adjudicates) in favor of the [petitioner], Estate of Orlando Llenado represented by Wenifreda Llenado, and against [respondents] *e.g.* Jorge, Eduardo, Felisa Gallardo, all surnamed Llenado, and the Register of Deeds of Valenzuela, Metro Manila, as follows:

1) It hereby judicially declare as non-existence (sic) and null and void, the following:

a) *The Kasulatan Sa Ganap na Kasunduan* or Deed of Sale;

b) TCT- Transfer Certificate of Title No. V-9440, in the name of [respondent] Eduardo Llenado, TCT- Transfer Certificate of Title No. V-1689, in the name of Jorge Llenado, and Eduardo Llenado, and all deeds, documents or proceedings leading to the issuance of said title, and all subsequent title issued therefrom and likewise whatever deeds, documents or proceedings leading to the issuance of said subsequent titles;

2) It hereby orders the reconveyance of the said properties embraced in the said TCTs-Transfer Certificate of Title Nos. V-9440 and V-1689 to the [petitioner] for the same consideration, or purchase price, paid by [respondents] Eduardo Llenado and Jorge Llenado for the same properties;

3) It hereby orders [respondent], Register of Deeds of Valenzuela, Metro Manila, to cause the issuance of new transfer certificates of title over the said property in the name of the [petitioner];

4) And, because this Court is not only a court of law, but of equity, it hereby rendered the following damages to be paid by the [respondents], as the [respondents] litigated under bonafide assertions that they have meritorious defense, *viz*:

a) ₱400,000.00 as moral damages;
b) 10,000.00 as nominal damages;
c) 10,000.00 as temperate damages;
d) 10,000.00 as exemplary damages;

e) 10,000.00 attorney's fees on the basis of *quantum merit* (sic); and
f) costs of suit.

SO ORDERED.[13]

The Regional Trial Court found that upon the death of Orlando on November 7, 1983, his rights under the lease contract were transmitted to his heirs; that since the lease was in full force and effect at the time the subject lot was sold by Cornelio to his sons, the sale violated the prohibitory clause in the said lease contract. Further, Cornelio's promise to sell the subject lot to Orlando may be established by parole evidence since an option to buy is not covered by the statute of frauds. Hence, the same is binding on Cornelio and his heirs.

Respondents appealed before the Court of Appeals which rendered the assailed May 30, 2000 Decision reversing the judgment of the Regional Trial Court and dismissing the Complaint. The appellate court held that the death of Orlando did not extinguish the lease agreement and had the effect of transmitting his lease rights to his heirs. However, the breach of the non-alienation clause of the said agreement did not nullify the sale between Cornelio and his sons because the heirs of Orlando are mere lessees on the subject lot and can never claim a superior right of ownership over said lot as against the registered owners thereof. It further ruled that petitioner failed to establish by a preponderance of evidence that Cornelio made a verbal promise to Orlando granting the latter the right of first refusal if and when the subject lot was sold.

Upon the denial of its motion for reconsideration, petitioner is now before this Court on the following assignment of errors:

[T]he Court of Appeals erred:

1.- In finding and concluding that there is no legal basis to annul the deed of conveyance involved in the case and in not applying R.A. No. 3516, further amending R.A. No. 1162; and

[13] *Id.* at 465-466; citations omitted.

2.- In not finding and holding as null and void the subject deed of conveyance, the same having been executed in direct violation of an expressed covenant in said deed and in total disregard of the pre-emptive, or preferential rights of the herein petitioners to buy the property subject of their lease contract under said R.A. No. 3516, further amending R.A. No. 1162.[14]

The petition lacks merit.

Petitioner contends that the heirs of Orlando are entitled to the rights of a tenant under Republic Act (R.A.) No. 1162,[15] as amended by R.A. No. 3516.[16] The right of first refusal or preferential right to buy the leased premises is invoked pursuant to Section 5[17] of said law and this

[14] *Rollo*, p. 21.

[15] "An Act Providing For The Expropriation Of Landed Estates Or Haciendas Or Lands Which Formed Part Thereof In The City Of Manila, Their Subdivision Into Small Lots, And The Sale Of Such Lots At Cost Or Their Lease On Reasonable Terms, And For Other Purposes." Effective June 18, 1954.

[16] "An Act To Further Amend Certain Sections Of Republic Act Numbered Eleven Hundred and Sixty-Two, Entitled 'An Act Providing For the Expropriation of Landed Estates Or Haciendas Or Lands Which Formerly Formed Part Thereof Or Any Piece Of Land In The City Of Manila, Quezon City and Suburbs, Their Subdivision Into Small Lots At Costs Or Their Lease On Reasonable Terms, And For Other Purposes.'" Effective May 22, 1963.

[17] Section 5. From the approval of this Act, and even before the commencement of the expropriation herein provided, ejectment proceedings against any tenant or occupant of any landed estates or haciendas or lands herein authorized to be expropriated, shall be suspended for a period of two years, upon motion of the defendant, if he pays in current rentals, and such suspension shall continue upon the filing of expropriation proceedings until the final determination of the latter: *Provided, however*, That if any tenant or occupant is in arrears in the payment of rentals or any amount due in favor of the owners of said landed estates or haciendas or lands, the amount legally due shall be liquidated either in cash or by surety bond, and shall be payable in eighteen equal monthly installments from the time of liquidation, but this payment of rentals in arrears shall not be a condition precedent to the suspension of ejectment proceedings: *Provided, further*, That the rentals being collected from the tenants of the landed estates or haciendas or lands herein authorized to be expropriated,

Court's ruling in *Mataas Na Lupa Tenants Association, Inc. v. Dimayuga*.[18]

This issue is being raised for the first time on appeal. True, in *Mataas Na Lupa Tenants Association, Inc.*, the Court explained that Section 1 of R.A. No. 1162, as amended by R.A. No. 3516, authorizes the expropriation of any piece of land in the City of Manila, Quezon City and suburbs which have been and are actually being leased to tenants for at least 10 years, provided said lands have at least 40 families of tenants thereon.[19] Prior to and pending the expropriation, the tenant shall have a right of first refusal or preferential right to buy the leased premises should the landowner sell the same. However, compliance with the conditions for the application of the aforesaid law as well as the qualifications of the heirs of Orlando to be beneficiaries thereunder were never raised before the trial court, or even the Court of Appeals, because petitioner solely anchored its claim of ownership over the subject lot on the alleged violation of the prohibitory clause in the lease contract between Cornelio and Orlando, and the alleged non-performance of the right of first refusal given by Cornelio to Orlando. The rule is settled, impelled by basic requirements of due process, that points of law, theories, issues and arguments not adequately brought to

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shall not be increased above the amounts of rentals being charged as of December thirty-one, nineteen hundred and fifty-three, except in cases where there are existing rental contracts for a fixed period which expired on said date, in which case the court shall fix a reasonable rental not exceeding eight per centum of the assessed value on December thirty-one, nineteen hundred and fifty-three, but, in any case, if after said date there has been an increase in assessment, the rental may also be increased by the corresponding amount of actual increase in the land tax: *Provided, furthermore*, That no lot or portion thereof actually occupied by a tenant or occupant shall be sold by the landowner to any other person that such tenant or occupant, unless the latter renounce in a public instrument his rights under this Act: *Provided, finally*, That if there shall be tenant who have constructed bona fide improvements on the lots leased by them, the rights of these tenants should be recognized in the sale or in the lease of the lots, the limitation as to area in Section three notwithstanding.

[18] 215 Phil. 18 (1984).

[19] *Id.* at 27.

the attention of the lower court will not be ordinarily considered by a reviewing court as they cannot be raised for the first time on appeal.[20] As the issue of the applicability of R.A. No. 1162, as amended, was neither averred in the pleadings nor raised during the trial below, the same cannot be raised for the first time on appeal.

At any rate, the allegations in the Complaint and the evidence presented during the trial below do not establish that Orlando or his heirs are covered by R.A. No. 1162, as amended. It was not alleged nor shown that the subject lot is part of the landed estate or haciendas in the City of Manila which were authorized to be expropriated under said law; that the Solicitor General has instituted the requisite expropriation proceedings pursuant to Section 2[21] thereof; that the subject lot has been actually leased for a period of at least ten (10) years; and that the subject lot has at least forty (40) families of tenants thereon. Instead, what was merely established during the trial is that the subject lot was leased by Cornelio to Orlando for the operation of a gasoline station, thus, negating petitioner's claim that the subject lot is covered by the aforesaid law. In *Mataas Na Lupa Tenants Association, Inc.*, the Court further explained that R.A. No. 1162, as amended, has been superseded by Presidential Decree (P.D.) No. 1517[22] entitled "Proclaiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof."[23] However, as held in *Tagbilaran Integrated Settlers Association Incorporated v. Court of Appeals*,[24] P.D. No. 1517 is applicable only in specific

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[20] *Natalia v. Court of Appeals*, G.R. No. 116216, June 20, 1997, 274 SCRA 527, 538-539.

[21] Section 2. Immediately upon the availability of the necessary funds by the Congress of the Philippines for the payment of just compensation for the said landed estates or haciendas, the Solicitor General shall institute the necessary expropriation proceedings before the competent court of the City of Manila.

[22] Effective June 11, 1978.

[23] *Supra* note 18 at 32.

[24] G.R. No. 148562, November 25, 2004, 444 SCRA 193.

areas declared, through presidential proclamation,[25] to be located within the so-called urban zones.[26] Further, only legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years, are given the right of first refusal to purchase the land within a reasonable time.[27] Consequently, those lease contracts entered into for commercial use are not covered by said law.[28] Thus, considering that petitioner failed to prove that a proclamation has been issued by the President declaring the subject lot as within the urban land reform zone and considering further that the subject lot was leased for the commercial purpose of operating a gasoline station, P.D. No. 1517 cannot be applied to this case.

In fine, the only issue for our determination is whether the sale of the subject lot by Cornelio to his sons, respondents Eduardo and Jorge, is invalid for (1) violating the prohibitory clause in the lease agreement between Cornelio, as lessor-owner, and Orlando, as lessee; and (2) contravening the right of first refusal of Orlando over the subject lot.

It is not disputed that the lease agreement contained an option to renew and a prohibition on the sale of the subject lot in favor of third persons while the lease is in force. Petitioner claims that when Cornelio sold the subject lot to respondents

[25] Section 4. *Proclamation of Urban Land Reform Zones*. The President shall proclaim specific parcels of urban and urbanizable lands as Urban Land Reform Zones, otherwise known as Urban Zones for purposes of this Decree x x x.

[26] *Supra* note 24 at 201.

[27] Section 6. *Land Tenancy in Urban Land Reform Areas*. Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

[28] *Supra* note 24 at 200-201.

Eduardo and Jorge the lease was in full force and effect, thus, the sale violated the prohibitory clause rendering it invalid. In resolving this issue, it is necessary to determine whether the lease agreement was in force at the time of the subject sale and, if it was in force, whether the violation of the prohibitory clause invalidated the sale.

Under Article 1311 of the Civil Code, the heirs are bound by the contracts entered into by their predecessors-in-interest except when the rights and obligations therein are not transmissible by their nature, by stipulation or by provision of law. A contract of lease is, therefore, generally transmissible to the heirs of the lessor or lessee. It involves a property right and, as such, the death of a party does not excuse non-performance of the contract.[29] The rights and obligations pass to the heirs of the deceased and the heir of the deceased lessor is bound to respect the period of the lease.[30] The same principle applies to the option to renew the lease. As a general rule, covenants to renew a lease are not personal but will run with the land.[31] Consequently, the successors-in-interest of the lessee are entitled to the benefits, while that of the lessor are burdened with the duties and obligations, which said covenants conferred and imposed on the original parties.

The foregoing principles apply with greater force in this case because the parties expressly stipulated in the March 31, 1978 Agreement that Romeo, as lessee, shall transfer all his rights and interests under the lease contract with option to renew "in favor of the party of the Third Part (Orlando), *the latter's heirs, successors and assigns*"[32] indicating the clear intent to allow the transmissibility of all the rights and interests of Orlando under the lease contract unto his heirs, successors or assigns. Accordingly, the rights and obligations under the lease contract

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[29] *DKC Holdings Corporation v. Court of Appeals*, 386 Phil. 107, 118 (2000).

[30] *Id*.

[31] 50 Am Jur 2d LANDLORD AND TENANT § 1194.

[32] Records, p. 14.

with option to renew were transmitted from Orlando to his heirs upon his death on November 7, 1983.

It does not follow, however, that the lease subsisted at the time of the sale of the subject lot on January 29, 1987. When Orlando died on November 7, 1983, the lease contract was set to expire 26 days later or on December 3, 1983, unless renewed by Orlando's heirs for another four years. While the option to renew is an enforceable right, it must necessarily be first exercised to be given effect.[33] As the Court explained in *Dioquino v. Intermediate Appellate Court*:[34]

> A clause found in an agreement relative to the renewal of the lease agreement at the option of the lessee gives the latter an enforceable right to renew the contract in which the clause is found for such time as provided for. The agreement is understood as being in favor of the lessee, and the latter is authorized to renew the contract and to continue to occupy the leased property *after notifying the lessor to that effect*. A lessor's covenant or agreement to renew gives a privilege to the tenant, but is nevertheless an executory contract, and until the tenant has exercised the privilege by way of some affirmative act, he cannot be held for the additional term. In the absence of a stipulation in the lease requiring notice of the exercise of an option or an election to renew to be given within a certain time before the expiration of the lease, which of course, the lessee must comply with, the general rule is that a lessee must exercise an option or election to renew his lease and *notify the lessor thereof before, or at least at the time of the expiration of his original term*, unless there is a waiver or special circumstances warranting equitable relief.

There is no dispute that in the instant case, the lessees (private respondents) were granted the option to renew the lease for another five (5) years after the termination of the original period of fifteen years. Yet, there was never any positive act on the part of private respondents before or after the termination of the original period to show their exercise of such option. The silence of the lessees after the termination of the original period cannot be taken to mean that they opted to renew the contract by virtue of the promise by the

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[33] *Mercy's Incorporated v. Verde*, G.R. No. L-21571, September 29, 1966, 18 SCRA 171, 175.

[34] G.R. Nos. 68580-81, November 7, 1989, 179 SCRA 163.

lessor, as stated in the original contract of lease, to allow them to renew. Neither can the exercise of the option to renew be inferred from their persistence to remain in the premises despite petitioners' demand for them to vacate. x x x.[35]

Similarly, the election of the option to renew the lease in this case cannot be inferred from petitioner Wenifreda's continued possession of the subject lot and operation of the gasoline station even after the death of Orlando on November 7, 1983 and the expiration of the lease contract on December 3, 1983. In the unlawful detainer case against petitioner Wenifreda and in the subject complaint for annulment of conveyance, respondents consistently maintained that after the death of Orlando, the lease was terminated and that they permitted petitioner Wenifreda and her children to remain in possession of the subject property out of tolerance and respect for the close blood relationship between Cornelio and Orlando. It was incumbent, therefore, upon petitioner as the plaintiff with the burden of proof during the trial below to establish by some positive act that Orlando or his heirs exercised the option to renew the lease. After going over the records of this case, we find no evidence, testimonial or documentary, of such nature was presented before the trial court to prove that Orlando or his heirs exercised the option to renew prior to or at the time of the expiration of the lease on December 3, 1983. In particular, the testimony of petitioner Wenifreda is wanting in detail as to the events surrounding the implementation of the subject lease agreement after the death of Orlando and any overt acts to establish the renewal of said lease.

Given the foregoing, it becomes unnecessary to resolve the issue on whether the violation of the prohibitory clause invalidated the sale and conferred ownership over the subject lot to Orlando's heirs, who are mere lessees, considering that at the time of said sale on January 29, 1987 the lease agreement had long been terminated for failure of Orlando or his heirs to validly renew the same. As a result, there was no obstacle to the sale of the subject lot by Cornelio to respondents Eduardo and Jorge

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[35] *Id.* at 171-172; citations omitted.

as the prohibitory clause under the lease contract was no longer in force.

Petitioner also anchors its claim over the subject lot on the alleged verbal promise of Cornelio to Orlando that should he (Cornelio) sell the same, Orlando would be given the first opportunity to purchase said property. According to petitioner, this amounted to a right of first refusal in favor of Orlando which may be proved by parole evidence because it is not one of the contracts covered by the statute of frauds. Considering that Cornelio sold the subject lot to respondents Eduardo and Jorge without first offering the same to Orlando's heirs, petitioner argues that the sale is in violation of the latter's right of first refusal and is, thus, rescissible.

The question as to whether a right of first refusal may be proved by parole evidence has been answered in the affirmative by this Court in *Rosencor Development Corporation v. Inquing*:[36]

> We have previously held that not all agreements "affecting land" must be put into writing to attain enforceability. Thus, we have held that the setting up of boundaries, the oral partition of real property, and an agreement creating a right of way are not covered by the provisions of the statute of frauds. The reason simply is that these agreements are not among those enumerated in Article 1403 of the New Civil Code.
>
> A right of first refusal is not among those listed as unenforceable under the statute of frauds. Furthermore, the application of Article 1403, par. 2(e) of the New Civil Code presupposes the existence of a perfected, albeit unwritten, contract of sale. A right of first refusal, such as the one involved in the instant case, is not by any means a perfected contract of sale of real property. At best, it is a contractual grant, not of the sale of the real property involved, but of the right of first refusal over the property sought to be sold.
>
> It is thus evident that the statute of frauds does not contemplate cases involving a right of first refusal. As such, a right of first refusal need not be written to be enforceable and may be proven by oral evidence.[37]

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[36] 406 Phil. 565 (2001).

[37] *Id.* at 577-578.

In the instant case, the Regional Trial Court ruled that the right of first refusal was proved by oral evidence while the Court of Appeals disagreed by ruling that petitioner merely relied on the allegations in its Complaint to establish said right. We have reviewed the records and find that no testimonial evidence was presented to prove the existence of said right. The testimony of petitioner Wenifreda made no mention of the alleged verbal promise given by Cornelio to Orlando. The two remaining witnesses for the plaintiff, Michael Goco and Renato Malindog, were representatives from the Register of Deeds of Caloocan City who naturally were not privy to this alleged promise. Neither was it established that respondents Eduardo and Jorge were aware of said promise prior to or at the time of the sale of the subject lot. On the contrary, in their answer to the Complaint, respondents denied the existence of said promise for lack of knowledge thereof.[38] Within these parameters, petitioner's allegations in its Complaint cannot substitute for competent proof on such a crucial factual issue. Necessarily, petitioner's claims based on this alleged right of first refusal cannot be sustained for its existence has not been duly established.

WHEREFORE, the petition is *DENIED*. The May 30, 2000 Decision of the Court of Appeals in CA-G.R. CV No. 58911 dismissing the complaint for annulment of deed of conveyance, title and damages, and the October 6, 2000 Resolution denying the motion for reconsideration, are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

[38] Records, p. 87.

[*] In lieu of Associate Justice Ma. Alicia Austria-Martinez, per Special Order No. 568 dated February 12, 2009.

FIRST DIVISION

[G.R. No. 156809. March 4, 2009]

ESTATE OF FELOMINA G. MACADANGDANG, represented by Court Appointed Administrator ATTY. OSWALDO MACADANGDANG, *petitioner, vs.* **LUCIA GAVIOLA, AGAPITO ROMERO, CRISTINA QUIÑONES, BOY LAURENTE, AGUSTINA TUNA, SOTERO TAPON, BUENAVENTURA MURING, SR., ROGELIO PASAJE, FE TUBORO, ESTANISLAO PEN, PABLO NAVALES, and JOSE DAGATAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES ON SUMMARY PROCEDURE; APPLICABILITY THEREOF TO EJECTMENT CASES. — Jurisdiction over forcible entry and unlawful detainer cases falls on the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts. Since the case before the MTCC was an unlawful detainer case, it was governed by the Rules on Summary Procedure. The purpose of the Rules on Summary Procedure is to prevent undue delays in the disposition of cases and to achieve this, the filing of certain pleadings is prohibited, including the filing of a motion for reconsideration. However, the motion for reconsideration that petitioners allege to be a prohibited pleading was filed before the RTC acting as an appellate court. The appeal before the RTC is no longer covered by the Rules on Summary Procedure. The Rules on Summary Procedure apply before the appeal to the RTC. Hence, respondents' motion for reconsideration filed with the RTC is not a prohibited pleading.

2. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; A CLIENT IS BOUND BY THE ACTS, EVEN MISTAKES, OF HIS COUNSEL IN THE REALM OF PROCEDURAL TECHNIQUE; EXCEPTIONS. — The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application

of the general rule results in the outright deprivation of one's property through a technicality. x x x We find no reason to exempt respondents from the general rule. The cause of the delay in the filing of the appeal memorandum, as explained by respondents' counsel, was not due to gross negligence. It could have been prevented by respondents' counsel if he only acted with ordinary diligence and prudence in handling the case. For a claim of gross negligence of counsel to prosper, nothing short of clear abandonment of the client's cause must be shown. In one case, the Court ruled that failure to file appellant's brief can qualify as simple negligence but it does not amount to gross neglience to justify the annulment of the proceedings below.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RIGHT TO APPEAL; NATURE. — The right to appeal is not a natural right or a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.

APPEARANCES OF COUNSEL

Danilo A. Cullo for petitioner.

Melzar P. Galicia for respondents Tuboro, Gaviola, Pasaje, and Pen.

Into Pantojan Feliciano Braceros and Donasco Law Offices for respondents Romero, Tapon, Navales, and Dagatan.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review assailing the 26 July 2002 Decision[1] and the 10 December 2002 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 62002.

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[1] *Rollo*, pp. 33-38. Penned by Associate Justice Romeo A. Brawner with Associate Justices Jose L. Sabio, Jr. and Mario L. Guariña III, concurring.

[2] *Id*. at 40.

The Antecedent Facts

On 18 January 2000, Atty. Oswaldo Macadangdang (Atty. Macadangdang), acting as administrator of the Estate of Felomina G. Macadangdang (petitioner), filed an action for Unlawful Detainer with Damages against Lucia Gaviola, Agapito Romero, Cristina Quiñones, Boy Laurente, Agustina Tuna, Sotero Tapon, Buenaventura Muring, Sr., Rogelio Pasaje, Fe Tuboro, Estanislao Pen, Pablo Navales, and Jose Dagatan (respondents). Respondents were occupying, by mere tolerance, portions of four parcels of land in the name of the late Felomina G. Macadangdang, covered by Transfer Certificate of Title Nos. T-6084, T-6085, T-6086, and T-6087, all in the Registry of Deeds of Davao City.

In a Decision[3] dated 27 June 2000, the Municipal Trial Court in Cities (MTCC), Branch 4, Davao City, ruled in favor of petitioner, as follows:

> WHEREFORE, judgment is hereby rendered ordering the defendants and all the persons claiming rights under them to:
>
> a) vacate their respective possession over the subject premises, and remove their structures built therein at their expense;
>
> b) pay plaintiff the sum of ₱500.00 a month, for each defendant, for the use and occupation of the said premises commencing the date of this decision until they vacate the same;
>
> c) pay plaintiff the sum of ₱5,000.00, each defendant, as attorney's fee; and
>
> d) cost of suit.
>
> Defendants' counterclaims being compulsory are dismissed.
>
> SO ORDERED.[4]

Respondents appealed from the MTCC's Decision.

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[3] *Id*. at 111-117. Penned by Presiding Judge George E. Omelio.

[4] *Id*. at 116-117.

The Ruling of the Trial Court

In an Order[5] dated 14 September 2000, the Regional Trial Court (RTC) of Davao City dismissed the appeal for respondents' failure to file an appeal memorandum.

On petitioner's motion, the RTC remanded the case to the MTCC for execution of judgment in its Order[6] dated 22 September 2000.

On 3 October 2000, respondents filed a Motion for Reconsideration/New Trial.

In an Order[7] dated 16 October 2000, the MTCC ordered the issuance of a writ of execution after payment of the execution fee.

In an Order[8] dated 30 October 2000, the RTC denied respondents' motion for reconsideration. The RTC ruled that it no longer had jurisdiction over the motion after the dismissal of respondents' appeal.

Respondents filed a petition for review before the Court of Appeals assailing the RTC's 14 September 2000 Order.

The Ruling of the Court of Appeals

In its Decision promulgated on 26 July 2002, the Court of Appeals set aside the 14 September 2000 Order and remanded the case to the RTC.

The Court of Appeals ruled that as a matter of policy, the dismissal of an appeal on purely technical grounds is frowned upon. The Court of Appeals ruled that rules of procedure are intended to promote and not defeat substantial justice and should not be applied in a very rigid and technical sense. The Court of Appeals further ruled that litigants should be afforded every

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[5] *Id*. at 118. Penned by Judge Augusto V. Breva.

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

[7] *Id*. at 141.

[8] *Id*. at 140.

opportunity to establish the merits of their cases without the constraints of technicalities.

The Court of Appeals ruled that a distinction should be made between failure to file a notice of appeal within the reglementary period and failure to file the appeal memorandum within the period granted by the appellate court. The Court of Appeals ruled that failure to file a notice of appeal within the reglementary period would result to failure of the appellate court to obtain jurisdiction over the appealed decision. Thus, the assailed decision would become final and executory upon failure to move for reconsideration. On the other hand, failure to file the appeal memorandum within the period granted by the appellate court would only result to abandonment of appeal, which could lead to its dismissal upon failure to move for its reconsideration. Thus, the RTC erred in denying respondents' motion for reconsideration on the ground of lack of jurisdiction.

Finally, the Court of Appeals ruled that while the negligence of counsel binds the client, the rule is not without exceptions such as when its application would result to outright deprivation of the client's liberty or property, or when a client would suffer due to the counsel's gross or palpable mistake or negligence.

Petitioner moved for the reconsideration of the Decision of the Court of Appeals.

In its 10 December 2002 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals erred in reversing the RTC's dismissal of respondents' appeal for failure to file an appeal memorandum.

The Ruling of this Court

The petition has merit.

Petitioners allege that the Court of Appeals erred when it allowed the filing of a motion for reconsideration before the

RTC. Petitioners allege that the case stemmed from an unlawful detainer case where the Rules on Summary Procedure apply. Petitioners allege that under the Rules on Summary Procedure, a motion for reconsideration is a prohibited pleading. Petitioners also allege that due to the mandatory character of Section 7(b), Rule 40 of the 1997 Rules of Civil Procedure, the RTC correctly dismissed the appeal. Petitioners also pointed out that respondents' Motion for Reconsideration/New Trial was neither verified nor accompanied by affidavits of merit as required under Section 2, Rule 37 of the 1997 Rules of Civil Procedure.

Applicability of the Rules on Summary Procedure

Jurisdiction over forcible entry and unlawful detainer cases falls on the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts.[9] Since the case before the MTCC was an unlawful detainer case, it was governed by the Rules on Summary Procedure. The purpose of the Rules on Summary Procedure is to prevent undue delays in the disposition of cases and to achieve this, the filing of certain pleadings is prohibited,[10] including the filing of a motion for reconsideration.[11]

However, the motion for reconsideration that petitioners allege to be a prohibited pleading was filed before the RTC acting as an appellate court. The appeal before the RTC is no longer covered by the Rules on Summary Procedure. The Rules on Summary Procedure apply before the appeal to the RTC. Hence, respondents' motion for reconsideration filed with the RTC is not a prohibited pleading.

Procedure on Appeal

Section 7, Rule 40 of the 1997 Rules of Civil Procedure provides:

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[9] Section 1(A), Revised Rule on Summary Procedure.

[10] *Arenas v. Court of Appeals*, 399 Phil. 372 (2000).

[11] Section 18(c).

Sec. 7. *Procedure in the Regional Trial Court.* —

(a) Upon receipt of the complete records or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. **Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.**

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed. (Emphasis supplied)

In this case, the RTC dismissed respondents' appeal for their failure to file an appeal memorandum in accordance with Section 7(b), Rule 40 of the 1997 Rules of Civil Procedure. The Court of Appeals reversed the RTC's dismissal of the appeal.

The Court of Appeals ruled that while the negligence of counsel binds the client, the circumstances in this case warrant a departure from this general rule. The Court of Appeals ruled that respondents' counsel only realized his failure to submit the appeal memorandum when he received a copy of the dismissal of the appeal. The Court of Appeals ruled that exceptions to the general rule are recognized to accord relief to a client who suffered by reason of the counsel's gross or palpable mistake or negligence.

We do not agree with the Court of Appeals.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[12]

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[12] *R Transport Corporation v. Philippine Hawk Transport Corporation*, G.R. No. 155737, 19 October 2005, 473 SCRA 342.

There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property through a technicality.[13]

In this case, respondents' counsel advanced this reason for his failure to submit the appeal memorandum:

> c. That there was a delay in the filing of defendants-appellants[']appeal memorandum due to the heavy backlog of legal paperwork piled on the table of the undersigned counsel, and he realized his failure to submit defendants[']appeal memorandum when he received a copy of the dismissal of the case. This is to consider that he is the only lawyer in his law office doing a herculean task.[14]

We find no reason to exempt respondents from the general rule. The cause of the delay in the filing of the appeal memorandum, as explained by respondents' counsel, was not due to gross negligence. It could have been prevented by respondents' counsel if he only acted with ordinary diligence and prudence in handling the case. For a claim of gross negligence of counsel to prosper, nothing short of clear abandonment of the client's cause must be shown.[15] In one case, the Court ruled that failure to file appellant's brief can qualify as simple negligence but it does not amount to gross neglience to justify the annulment of the proceedings below.[16]

Finally, respondents were not deprived of due process of law. The right to appeal is not a natural right or a part of due process.[17] It is merely a statutory privilege and may be exercised

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[13] *Id*.

[14] Records, p. 144.

[15] *Que v. Court of Appeals,* G.R. No. 150739, 18 August 2005, 467 SCRA 358.

[16] *Redeña v. Court of Appeals,* G.R. No. 146611, 6 February 2007, 514 SCRA 389.

[17] *Producers Bank of the Phils. v. Court of Appeals,* 430 Phil. 812 (2002).

only in the manner and in accordance with the provisions of the law.[18] The Court notes that in their memoranda,[19] respondents admitted that they signed an agreement that they would vacate the land they occupy not later than 28 February 1998. They refused to vacate the land only because they were not relocated as promised by the owner. Respondents claimed that the land was later declared alienable and disposable, and the decision was affirmed by this Court. Hence, respondents alleged that petitioner no longer had the right to drive them out of the land. However, respondents did not even indicate the case number and title, as well as the date of promulgation of the alleged Supreme Court decision, in their memoranda.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 26 July 2002 Decision and the 10 December 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 62002.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Brion,*[*] *JJ.,* concur.

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[18] *Id*.

[19] *Rollo,* pp. 312-321, 323-332.

[*] Designated member per Special Order No. 570.

SECOND DIVISION

[G.R. No. 171511. March 4, 2009]

RONNIE CALUAG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF ERRORS OF LAW; EXCEPTION. — The well-entrenched rule is that only errors of law and not of fact are reviewable by this Court in petitions for review on *certiorari* under Rule 45 under which this petition is filed. It is not the Court's function under Rule 45 to review, examine and evaluate or weigh once again the probative value of the evidence presented. Moreover, findings of fact of the trial court, when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to weigh anew the evidence already passed upon by the Court of Appeals for these are deemed final and conclusive and may no longer be reviewed on appeal. A departure from the general rule, however, may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record. Nevertheless, we find that there is no ground to apply the exception in the instant case because the findings and conclusions of the Court of Appeals are in full accord with those of the MeTC and the RTC. This Court will not assess and evaluate all over again the evidence, both testimonial and documentary, adduced by the parties to the appeal particularly where, as in this case, the findings of the MeTC, the RTC and the Court of Appeals completely coincide.

2. CRIMINAL LAW; THREATS; KINDS. — In **grave threats,** the wrong threatened amounts to a crime which may or may not be accompanied by a condition. In **light threats,** the wrong threatened does not amount to a crime but is always accompanied by a condition. In **other light threats,** the wrong threatened does not amount to a crime and there is no condition.

3. ID.; GRAVE THREATS; COMMITTED IN CASE AT BAR. — The records show that at around 7:30 in the evening, Julia Denido left her house to go to the *barangay* hall to report the mauling of her husband which she witnessed earlier at around 4:00 o'clock in the afternoon. On her way there, petitioner confronted her and pointed a gun to her forehead, while at the same time saying "*Saan ka pupunta, gusto mo ito*?" Considering what transpired earlier between petitioner and Julia's husband, petitioner's act of pointing a gun at Julia's forehead clearly enounces a threat to kill or to inflict serious physical injury on her person. Actions speak louder than words. Taken in the context of the surrounding circumstances, the uttered words do not go against the threat to kill or to inflict serious injury evinced by petitioner's accompanying act. Given the surrounding circumstances, the offense committed falls under Article 282, par. 2 (grave threats) since: (1) killing or shooting someone amounts to a crime, and (2) the threat to kill was not subject to a condition. Article 285, par. 1 (other light threats) is inapplicable although it specifically states, "shall threaten another with a weapon or draw such weapon in a quarrel," since it presupposes that the threat to commit a wrong will not constitute a crime. That the threat to commit a wrong will constitute or not constitute a crime is the distinguishing factor between grave threats on one hand, and light and other light threats on the other.

APPEARANCES OF COUNSEL

The Law Firm of Tagum Del Rosario Mejia and Velasco for petitioner.

The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated December 9, 2005 of the Court of Appeals in CA-G.R. CR No. 28707

[1] *Rollo*, pp. 46-57. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Eliezer R. Delos Santos and Josefina Guevara-Salonga, concurring.

and its Resolution[2] dated February 15, 2006, denying reconsideration. The appellate court had affirmed the Decision[3] dated August 3, 2004 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198, in Criminal Case No. 04-0183-84, which affirmed the Joint Decision[4] dated January 28, 2004 of the Metropolitan Trial Court (MeTC) of Las Piñas City, Branch 79, in Criminal Cases Nos. 47358 and 47381 finding petitioner Ronnie Caluag and Jesus Sentillas guilty of slight physical injuries and Ronnie Caluag guilty of grave threats.

The factual antecedents of this case are as follows:

On May 18 and 23, 2000, two separate Informations[5] docketed as Criminal Cases Nos. 47381 and 47358, respectively, were filed against Caluag and Sentillas. The Information in Criminal Case No. 47381 charged Caluag and Sentillas with slight physical injuries committed as follows:

> That on or about the **19th day of March, 2000**, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and both of them mutually helping and aiding one another did then and there willfully, unlawfully and feloniously attack, assault, and employ personal violence upon the person of **NESTOR PURCEL DENIDO**, by then and there mauling him, thereby inflicting upon him physical injuries which required medical attendance for less than nine (9) days and incapacitated him from performing his customary labor for the same period of time.
>
> CONTRARY TO LAW.[6]

The Information in Criminal Case No. 47358 charged Caluag with grave threats committed as follows:

> That on or about the 19th day of March 2000, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court,

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[2] *Id.* at 68.

[3] Records, pp. 256-261. Penned by Judge Erlinda Nicolas-Alvaro.

[4] *Id.* at 71-79. Penned by Judge Pio M. Pasia.

[5] *Id.* at 1-2.

[6] *Id.* at 2.

the above-named accused, moved by personal resentment which he entertained against one **JULIA LAVIAL DENIDO**, did then and there willfully, unlawfully and feloniously threaten said **JULIA LAVIAL DENIDO** with the infliction on her person of a harm amounting to a crime, by then and there poking his gun at her forehead and uttering the following words in tagalog, to wit:

"*Saan ka pupunta gusto mo ito*?"

thereby causing said complainant to be threatened.

CONTRARY TO LAW.[7]

Upon arraignment, Caluag and Sentillas pleaded not guilty. Thereafter, joint trial ensued.

The prosecution presented the two private complainants, the spouses Nestor and Julia Denido, as witnesses. Their version of the facts are as follows:

In the afternoon of March 19, 2000, around 4 o'clock[8] in the afternoon, Nestor learned that two of his guests from an earlier drinking spree were mauled. At that time, Caluag and Sentillas were drinking at the store owned by the son of Sentillas. When Nestor inquired from several people including his own son Raymond what happened, Caluag butted in and replied, "*Bakit kasama ka ba roon?*," and immediately boxed him without warning. Nestor retaliated but he was overpowered by Caluag and Sentillas. Julia saw Caluag and Sentillas box her husband. Although she tried to pacify them, they did not listen to her. To avoid his assailants, Nestor ran to his house. Julia followed him. At around 6:00 p.m., Nestor told his wife to report the boxing incident to the *barangay* authorities.[9]

Later, at around 7:30 in the evening, when Julia and her son Rotsen were on their way to their *barangay* hall, she encountered Caluag, who blocked her way at the alley near her house. Caluag

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[7] *Id.* at 1.

[8] Time as stated during cross-examination. In the *Sinumpaang Salaysay*, the time of the incident is stated as "*bandang 7:30 ng gabi*."

[9] *Id.* at 4 and 140.

confronted Julia with a gun, poked it at her forehead, and said "*Saan ka pupunta, gusto mo ito?*"[10] Despite this fearful encounter, she was still able to proceed to the *barangay* hall where she reported the gun-poking incident to the *barangay* authorities.[11]

For its part, the defense presented the accused Caluag and Sentillas; and the barbecue vendor Pablo Barrameda, Jr. as witnesses. According to them, in the afternoon of March 19, 2000 at around 6 o'clock in the evening, Caluag was on his way home with his three-year old son when Nestor, drunk and unruly, blocked his way and asked him, "*Pare, galit ka ba sa akin?*" He answered in the negative but Nestor persisted in his questioning and would not allow him to pass through. Annoyed, he told Nestor, "*Hindi nga! Ang kulit kulit mo!*" Nestor then boxed him on his face which caused him to fall down. Caluag first assured himself of the safety of his son and then punched Nestor back. As people around pacified them, he was led to the store owned by the son of Sentillas. Nestor pursued him and punched him again. As he retaliated, some bystanders separated them. Nestor then shouted, "*Putang ina mo, Pare! Gago ka! Gago ka! Marami ka ng taong niloko!*" Thereafter, an unidentified man from the crowd armed with a knife went towards Nestor but Sentillas timely interceded and pacified the man. Sentillas never boxed Nestor. Caluag also denied poking a gun at Julia.[12]

In a Joint Decision dated January 28, 2004, the MeTC found Caluag and Sentillas guilty of slight physical injuries, and Caluag guilty of grave threats.

The MeTC relied on Nestor's testimony. It noted that Nestor did not deny that he was drunk at the time of the incident while Caluag admitted that he got annoyed by Nestor's attitude. The

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[10] TSN, November 19, 2001, p. 5; *Sinumpaang Salaysay* (Exhibit A), records, p. 25.

[11] *Id.* at 3 and 86.

[12] *Id.* at 8-10 and 184.

MeTC concluded that Caluag and Sentillas lost control of their tempers due to Nestor's unruly behavior. On the other hand, the MeTC noted that Julia did not waste time reporting the gun-poking incident to the *barangay*. While she had intended to report the mauling of her husband, as he instructed her, what she reported instead was what happened to her. With such straightforward and seemingly natural course of events, the MeTC was convinced that the negative assertions of Caluag and Sentillas cannot prevail over the positive testimonies of Nestor and Julia.

The decretal portion of the joint decision reads:

> WHEREFORE, all the foregoing premises considered, the Court finds and declares accused RONNIE CALUAG AND JESUS S[E]NTILLAS GUILTY beyond reasonable doubt of the offense of Slight Physical Injuries under Criminal Case No. 47381, and sentences them to pay [a] fine of ₱200.00 each. The two (2) accused are also censured to be more complaisant and well-bred in dealing with people.
>
> The Court also finds accused RONNIE CALUAG guilty beyond reasonable doubt of the offense of Grave Threats under Article 282, par. 2 of the Revised Penal Code, under Criminal Case No. 47358, and sentences him to suffer two (2) months imprisonment [and to] pay [a] fine of ₱200.00.
>
> Criminal Case No. 47382, as earlier explained, is ordered dismissed being merely a duplication of Criminal Case No. 47358.
>
> SO ORDERED.[13]

Caluag and Sentillas appealed to the RTC which affirmed *in toto* the joint decision of the MeTC.

On appeal, the Court of Appeals affirmed the decision of the RTC on December 9, 2005. The appellate court noted that the MeTC gave credence to the testimonies of Nestor and Julia because they were in accord with the natural course of things. Likewise, petitioner's negative assertions cannot prevail over the positive testimonies of Nestor and Julia. The appellate

[13] *Id.* at 79.

court disregarded the purported inconsistencies in the testimonies of Nestor and Julia since these refer to collateral matters and not to the essential details of the incident.

Dissatisfied, petitioner appealed to this Court on the ground that the Court of Appeals:

I.

… MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES AND WHICH, IF PROPERLY CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION;

II.

… ERRED IN AFFIRMING THE FINDINGS OF THE [MeTC] WHICH MADE INFERENCES OR CONCLUSIONS IN ITS JOINT DECISION THAT ARE MANIFESTLY MISTAKEN, ABSURD OR IMPOSSIBLE AND WHICH ARE GROUNDED ENTIRELY ON SPECULATIONS, SURMISES OR CONJECTURES OR ARE BASED ON A MISAPPREHENSION OF FACTS;

III.

… ERRED IN RULING THAT THE PETITIONER HEREIN IS GUILTY OF THE OFFENSES CHARGED BEYOND A REASONABLE DOUBT.[14]

Simply, the issue is: Was there sufficient evidence to sustain petitioner's conviction of slight physical injuries and of grave threats?

Petitioner contends that he was able to present Barrameda, an independent and impartial witness, who supported his version of events and debunked those of Nestor and Julia. Contrary to the findings of the lower courts that petitioner offered mere denials, Barrameda's testimony is actually a positive statement that should have been given full credit. Petitioner also argues that although the lower courts acknowledged that Nestor was drunk and troublesome at the time of the incident, they chose to believe his testimony rather than petitioner's. Petitioner adds that there is no basis for the lower courts to conclude that he

[14] *Rollo,* p. 24.

lost his temper because of Nestor's unruly behavior. Petitioner maintains that just because Julia immediately reported the gun-poking incident to the *barangay*, this did not necessarily mean that it actually happened. Petitioner also argues that assuming that he did poke a gun at Julia, the crime committed was other light threats as defined under Article 285, paragraph 1 of the Revised Penal Code.[15]

For the respondent, the Office of the Solicitor General (OSG) counters that the MeTC did not err in giving credence to the testimonies of Nestor and Julia. The MeTC found that the positive assertions of Nestor and Julia, their straightforward manner of testifying, and the seemingly natural course of events, constituted the more plausible and credible version. The MeTC also noted that Julia did not waste time reporting the gun-poking incident to the *barangay* authorities immediately after it happened. The OSG also agrees with the MeTC that petitioner lost his temper, given the unruly behavior of Nestor.

We find the petition with insufficient merit and accordingly sustain petitioner's conviction.

At the outset, it must be stressed that petitioner raises questions of fact. Certainly, such matters mainly require a calibration of the evidence or a determination of the credibility of the witnesses presented by the parties and the existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[16]

The well-entrenched rule is that only errors of law and not of fact are reviewable by this Court in petitions for review on *certiorari* under Rule 45 under which this petition is filed. It is not the Court's function under Rule 45 to review, examine

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[15] *Id.* at 27.

[16] *Lamis v. Ong*, G.R. No. 148923, August 11, 2005, 466 SCRA 510, 517.

and evaluate or weigh once again the probative value of the evidence presented.[17]

Moreover, findings of fact of the trial court, when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to weigh anew the evidence already passed upon by the Court of Appeals for these are deemed final and conclusive and may no longer be reviewed on appeal.[18]

A departure from the general rule, however, may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record. Nevertheless, we find that there is no ground to apply the exception in the instant case because the findings and conclusions of the Court of Appeals are in full accord with those of the MeTC and the RTC. This Court will not assess and evaluate all over again the evidence, both testimonial and documentary, adduced by the parties to the appeal particularly where, as in this case, the findings of the MeTC, the RTC and the Court of Appeals completely coincide.[19]

Even if the Court relaxes the abovecited general rule and resolves the petition on the merits, we still find no reversible error in the appellate court's ruling.

As the lower courts and the Court of Appeals correctly stated, the testimonies of Nestor and Julia were more in accord with the natural course of things. There could be no doubt that Caluag and Sentillas lost control of their temper as Caluag himself admitted that he got annoyed by Nestor's unruly behavior. Likewise, the gun-poking incident also happened since Julia did not waste time in reporting it to the *barangay* authorities.

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[17] *Lorenzo v. People*, G.R. No. 152335, December 19, 2005, 478 SCRA 462, 469.

[18] *Changco v. Court of Appeals*, G.R. No. 128033, March 20, 2002, 379 SCRA 590, 593-594.

[19] *Id.* at 594.

Instead of reporting the mauling of her husband, she reported what happened to her in her hurry, excitement and confusion. Indeed, the positive declarations of Nestor and Julia that petitioner committed the acts complained of undermined his negative assertions. The fact that Barrameda testified in petitioner's behalf cannot be given more weight than the straightforward and credible statements of Nestor and Julia. Indeed, we find they had no reason to concoct stories to pin down petitioner on any criminal act, hence their testimonies deserve full faith and credit.

The MeTC, the RTC and the Court of Appeals uniformly found petitioner guilty of grave threats under Article 282, par. 2 of the Revised Penal Code and sentenced him to suffer two months of imprisonment and to pay a fine of ₱200. We find no reason to reverse the findings and conclusions of the MeTC and RTC, as affirmed by the Court of Appeals.

Under the Revised Penal Code, there are three kinds of threats: grave threats (Article 282), light threats (Article 283) and other light threats (Article 285). These provisions state:

Art. 282. Grave threats. — Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, shall suffer:

1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or imposing any other condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed.

If the threat be made in writing or through a middleman, the penalty shall be imposed in its maximum period.

2. The penalty of *arresto mayor* and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.

Art. 283. Light threats. — Any threat to commit a wrong not constituting a crime, made in the manner expressed in subdivision 1 of the next preceding article, shall be punished by *arresto mayor*.

Art. 285. Other light threats. — The penalty of *arresto menor* in its minimum period or a fine not exceeding 200 pesos shall be imposed upon:

1. Any person who, without being included in the provisions of the next preceding article, shall threaten another with a weapon or draw such weapon in a quarrel, unless it be in lawful self-defense.

2. Any person who, in the heat of anger, shall orally threaten another with some harm not constituting a crime, and who by subsequent acts show that he did not persist in the idea involved in his threat, provided that the circumstances of the offense shall not bring it within the provisions of Article 282 of this Code.

3. Any person who shall orally threaten to do another any harm not constituting a felony.

In **grave threats**, the wrong threatened amounts to a crime which may or may not be accompanied by a condition. In **light threats**, the wrong threatened does not amount to a crime but is always accompanied by a condition. In **other light threats**, the wrong threatened does not amount to a crime and there is no condition.

The records show that at around 7:30 in the evening, Julia Denido left her house to go to the *barangay* hall to report the mauling of her husband which she witnessed earlier at around 4:00 o'clock in the afternoon. On her way there, petitioner confronted her and pointed a gun to her forehead, while at the same time saying "*Saan ka pupunta, gusto mo ito*?"[20] Considering what transpired earlier between petitioner and Julia's husband, petitioner's act of pointing a gun at Julia's forehead clearly enounces a threat to kill or to inflict serious physical injury on her person. Actions speak louder than words. Taken in the context of the surrounding circumstances, the uttered words do not go against the threat to kill or to inflict serious injury evinced by petitioner's accompanying act.

[20] Exhibit A, Records, p. 25.

Given the surrounding circumstances, the offense committed falls under Article 282, par. 2 (grave threats) since: (1) killing or shooting someone amounts to a crime, and (2) the threat to kill was not subject to a condition.

Article 285, par. 1 (other light threats) is inapplicable although it specifically states, "shall threaten another with a weapon or draw such weapon in a quarrel," since it presupposes that the threat to commit a wrong will not constitute a crime. That the threat to commit a wrong will constitute or not constitute a crime is the distinguishing factor between grave threats on one hand, and light and other light threats on the other.

WHEREFORE, the petition is *DENIED* for utter lack of merit. The Decision dated December 9, 2005 and the Resolution dated February 15, 2006 of the Court of Appeals in CA-G.R. CR No. 28707 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Velasco, Jr.,* and *Brion, JJ.,* concur.

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[*] Designated member of Second Division pursuant to Special Order No. 580 in place of Associate Justice Antonio Eduardo B. Nachura, who was earlier designated as an additional member per Special Order No. 571 but will take no part being then the Solicitor General.

EN BANC

[G.R. No. 174620. March 4, 2009]

ALDO B. CORDIA, *petitioner, vs.* **JOEL G. MONFORTE and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; APPRECIATION OF BALLOTS; BEST LEFT TO THE DETERMINATION OF THE COMMISSION ON ELECTIONS. — The object of the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. When placed in issue, the appreciation of contested ballots and election documents, which involves a question of fact, is best left to the determination of the COMELEC.

2. ID.; ID.; ID.; ID.; *IDEM SONANS* RULE; APPLIED IN CASE AT BAR. — The COMELEC, in crediting to respondent the vote for "Mantete" in Exhibit "A", following the *idem sonans* rule, the Court finds no grave abuse of discretion. Petitioner posits that "Mantete" could refer to Pedro Andes, a candidate for *kagawad* who, according to him, was fondly called "Pete" or "Mang Pete" in the *barangay*. As respondent counters, that there is no proof that **"*Mang* Pete"** is Andes' registered nickname.

3. ID.; ID.; ID.; ID.; NEIGHBORHOOD RULE; EXPLAINED. — Neither does the Court find grave abuse of discretion in the COMELEC's application to Exhibits "A", "D", "E", "F," "H", and "K" of the "neighborhood rule," which rule refers to: "As used by this Court, this nomenclature, loosely based on a rule of the same name devised by the House of Representatives Electoral Tribunal (HRET), refers to an exception to the rule on appreciation of misplaced votes under Section 211 (19) of *Batas Pambansa Blg.* 881 (Omnibus Election Code) which provides: "**Any vote** in favor of a person who has not filed a certificate of candidacy or **in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote** but it shall not invalidate the whole ballot." Section

211 (19) is meant to avoid confusion in the minds of the election officials as to the candidates actually voted for and to stave off any scheming design to identify the vote of the elector, thus defeating the secrecy of the ballot which is a cardinal feature of our election laws. Section 211 (19) also enforces Section 195 of the Omnibus Election Code which provides that in preparing the ballot, each voter must "fill his ballot by writing in the proper place for each office the name of the individual candidate for whom he desires to vote." Excerpted from Section 211 (19) are ballots with (1) a general misplacement of an *entire series* of names intended to be voted for successive offices appearing in the ballot, (2) a single or double misplacement of names where such names were preceded or followed by the title of the contested office or where the voter wrote after the candidate's name a directional symbol indicating the correct office for which the misplaced name was intended; and (3) a single misplacement of a name written (a) off-center from the designated space, (b) slightly underneath the line for the contested office, (c) immediately above the title for the contested office, or (d) in the space for an office immediately following that for which the candidate presented himself. In these instances, the misplaced votes are nevertheless credited to the candidates for the office for which they presented themselves because the voters' intention to so vote is clear from the face of the ballots. This is in consonance with the settled doctrine that ballots should be appreciated with liberality to give effect to the voters' will."

4. ID.; ID.; ID.; ID.; A BALLOT SHALL NOT BE CONSIDERED AS A MARKED BALLOT WHEN THERE IS NO INDICATION THAT THE BLOT OR MARK THEREIN WAS DELIBERATELY PLACED TO IDENTIFY THE VOTER; CASE AT BAR. — Nor does the Court find grave abuse of discretion in the COMELEC's not rejecting Exhibit "C-17" as a marked ballot, there being no indication that the blot therein was deliberately placed to identify the voter. Thus, Section 211 (22) of the Omnibus Election Code states Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use

of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot. Petitioner argues, nevertheless, that the COMELEC did not examine the original ballot marked as Exhibit "C-17", for if it did, it could have seen that what appears thereon is not a mere ink smudge but a hole with "searing around it deliberately burned by a lighted cigarette." Both parties admitted the authenticity of the copies of the ballots examined in the case, however. Even assuming that what appears to be an ink smudge on Exhibit "C-17" is actually a hole burned by a lighted cigarette, there is no proof that the burning was deliberately done to identify the voter.

APPEARANCES OF COUNSEL

Batocabe & Associates Law Offices for petitioner.

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Aldo B. Cordia (petitioner) and Joel G. Monforte (respondent) were official candidates for the position of *Punong Barangay* of Barangay 16 (East Washington) in Legazpi City, Albay during the July 15, 2002 synchronized *Barangay* and *Sangguniang Kabataan* elections.

After the canvassing of votes, the Barangay Board of Canvassers proclaimed petitioner as the winning candidate, having obtained 614 votes against the 609 votes obtained by respondent.

On July 18, 2002, respondent filed an Election Protest before the Municipal Trial Court in Cities (MTCC) of Legazpi City, alleging that "(f)or lack of familiarity with the Rules on Appreciation of ballot[s] under Sec. 49 of COMELEC Resolution No. 4846 dated June 13, 2002, the Board of Election Teller failed to credit [him]with as many as ten (10) votes."[1]

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[1] *Rollo*, p. 51.

The MTCC ordered a recount of the votes which yielded the following results:[2]

	JOEL MONFORTE [respondent]	ALDO CORDIA [petitioner]
UNCONTESTED VOTES	591	440
ADD: CONTESTED/OBJECTED But Credited Votes	18	174
ADD: CLAIMED and ADMITTED VOTES	7	0
TOTAL:	616	614

The MTCC thereupon rendered judgment in favor of respondent, accordingly annulling and setting aside the proclamation of petitioner, declaring respondent as the lawful and duly elected *Punong Barangay*, directing petitioner to vacate the Office of the *Punong Barangay* and to relinquish said position to respondent, and ordering petitioner to pay the total amount of ₱6,350.00 representing the honoraria of the members of the Revision Committee and its support staff and other miscellaneous expenses.[3]

On appeal, the Second Division of the COMELEC affirmed the MTCC Decision by Resolution[4] of August 14, 2003.

On Motion for Reconsideration, the COMELEC *En Banc* affirmed[5] the decision of the Second Division by a 5-1 vote with Commissioner Rene V. Sarmiento dissenting.[6]

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[2] *Id.* at 62.

[3] *Id.* at 63.

[4] Penned by Commissioner Florentino A. Tuason, Jr. with the concurrences of Commissioners Ralph C. Lantion and MeHol K. Sadain. *Id.* at 64-71.

[5] Resolution of September 6, 2006, penned by Commissioner Resurreccion Z. Borra, with the concurrences of Chairman Benjamin S. Abalos, Florentino A. Tuason, Jr., Romeo A. Brawner, and Nicodemo T. Ferrer and with the dissent of Commissioner Rene V. Sarmiento. *Id.* at 64-77.

[6] *Id.* at 78-82.

Hence, petitioner's present Petition for *Certiorari* (With Urgent Application for Temporary Restraining Order),[7] alleging that the COMELEC committed grave abuse of discretion

(I)

x x x in applying the neighborhood rule when it disregarded judicial precedents and credited as votes in favor of respondent, a candidate for *punong barangay*, the questioned ballots marked as Exhibits A, D, E, F, H, and K on the mere basis that his name was written on the first space or line intended for the position of *kagawad*

(II)

x x x in applying the principle of *idem sonans* when it counted in favor of private respondent the vote "Mantete" appearing in the questioned ballot marked as Exhibit "A" and worse, written not on the line or space for *punong barangay* but *kagawad*.

(III)

x x x when it ruled that the circle mark on the ballot marked as Exhibit C-17 xxx is but an ink smudge which is not a marking of the ballot.[8] (Emphasis supplied)

In the meantime, the MTCC issued on October 31, 2006 a writ of execution.[9] In view of petitioner's filing before this Court of an Extremely Urgent Motion Reiterating the Application for Issuance of Temporary Restraining Order,[10] the MTCC recalled and set aside the Writ of Execution.[11] And, on respondent's Motion for Execution of Judgment,[12] the COMELEC declared its Resolution final and executory,[13] and entered its

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[7] *Id.* at 3-39.

[8] *Id.* at 14.

[9] *Id.* at 106-107.

[10] *Id.* at 86-unnumbered page after p. 88.

[11] *Id.* at 108.

[12] *Id.* at 162-163.

[13] *Id.* at 162-163.

judgment.[14] On January 15, 2007, respondent took his oath of office.[15]

The Court finds the petition bereft of merit.

The object of the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.[16] When placed in issue, the appreciation of contested ballots and election documents, which involves a question of fact, is best left to the determination of the COMELEC.[17]

The COMELEC, in crediting to respondent the vote for "Mantete" in Exhibit "A", following the *idem sonans* rule, the Court finds no grave abuse of discretion.

Petitioner posits that "Mantete" could refer to Pedro Andes, a candidate for *kagawad* who, according to him, was fondly called "Pete" or "Mang Pete" in the *barangay*.[18] As respondent counters, that there is no proof that ***"Mang* Pete"** is Andes' registered nickname.[19]

Neither does the Court find grave abuse of discretion in the COMELEC's application to Exhibits "A", "D", "E", "F", "H", and "K"[20] of the "neighborhood rule," which rule refers to:

> As used by this Court, this nomenclature, loosely based on a rule of the same name devised by the House of Representatives Electoral Tribunal (HRET), refers to an exception to the rule on appreciation

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[14] *Id.* at 164-164.

[15] *Rollo*, unnumbered page between pp. 164-165.

[16] *Juan v. Commission on Elections*, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 126.

[17] *Id.* at 126-127.

[18] *Rollo*, p. 30.

[19] *Id.* at 144.

[20] *Id.* at 40-45.

of misplaced votes under Section 211 (19) of *Batas Pambansa Blg.* 881 (Omnibus Election Code) which provides:

> "**Any vote** in favor of a person who has not filed a certificate of candidacy or **in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote** but it shall not invalidate the whole ballot." (Emphasis supplied.)

Section 211 (19) is meant to avoid confusion in the minds of the election officials as to the candidates actually voted for and to stave off any scheming design to identify the vote of the elector, thus defeating the secrecy of the ballot which is a cardinal feature of our election laws. Section 211 (19) also enforces Section 195 of the Omnibus Election Code which provides that in preparing the ballot, each voter must "fill his ballot by writing in the proper place for each office the name of the individual candidate for whom he desires to vote."

Excerpted from Section 211 (19) are ballots with (1) a general misplacement of an *entire series* of names intended to be voted for successive offices appearing in the ballot, (2) a single or double misplacement of names where such names were preceded or followed by the title of the contested office or where the voter wrote after the candidate's name a directional symbol indicating the correct office for which the misplaced name was intended; and (3) a single misplacement of a name written (a) off-center from the designated space, (b) slightly underneath the line for the contested office, (c) immediately above the title for the contested office, or (d) in the space for an office immediately following that for which the candidate presented himself. In these instances, the misplaced votes are nevertheless credited to the candidates for the office for which they presented themselves because the voters' intention to so vote is clear from the face of the ballots. This is in consonance with the settled doctrine that ballots should be appreciated with liberality to give effect to the voters' will.[21] (Underscoring and italics supplied)

Nor does the Court find grave abuse of discretion in the COMELEC's not rejecting Exhibit "C-17"[22] as a marked ballot,

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[21] *Velasco v. Commission on Elections*, G.R. No. 166931, February 22, 2007, 516 SCRA 447, 456-459.

[22] *Rollo*, p. 46.

there being no indication that the blot therein was deliberately placed to identify the voter. Thus, Section 211 (22) of the Omnibus Election Code states

> Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot. (Underscoring supplied)

Petitioner argues, nevertheless, that the COMELEC did not examine the original ballot marked as Exhibit "C-17", for if it did, it could have seen that what appears thereon is not a mere ink smudge but a hole with "searing around it deliberately burned by a lighted cigarette."[23] Both parties admitted the authenticity of the copies of the ballots examined in the case, however.[24]

Even assuming that what appears to be an ink smudge on Exhibit "C-17" is actually a hole burned by a lighted cigarette, there is no proof that the burning was deliberately done to identify the voter.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago, Austria-Martinez, and *Tinga, JJ.,* on official leave.

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[23] *Id.* at 31-32.

[24] *Id.* at 51.

SECOND DIVISION

[G.R. No. 178322. March 4, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GENEROSO ROLIDA *y* MORENO @ KA DAVID/ KA RAQUEL,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; COLLECTIVE ACT TO COMMIT MURDER QUALIFIED BY TREACHERY AND AGGRAVATED BY EVIDENT PREMEDITATION, ESTABLISHED IN CASE AT BAR; PENALTY. — In finding the existence of conspiracy, the trial and appellate courts found the collective acts of appellant and his cohorts before, during, and after the shooting of the victim as indicating the pursuit of a common design to kill, hence, the act of one is the act of all. The trial and appellate courts also found the deliberate employment of high-powered guns and nocturnity to have obviated any opportunity for the victim to defend himself, hence their appreciation of the presence of treachery which absorbed the circumstance of abuse of superior strength. Relying on the testimony of Endiape, both courts held that evident premeditation attended the killing, there having been a sufficient interval for cool thought and reflection between the time appellant and his group determined to commit the crime on August 24, 2001 when they left for the victim's residence, and the time that they actually executed the planned attack on August 27, 2001. The trial and appellate courts thus found appellant beyond reasonable doubt of Murder qualified by treachery and aggravated by evident premeditation. This Court finds no compelling reason to rule otherwise. x x x With respect to the penalty, the Court finds the appellate court's imposition of *reclusion perpetua* to be in accord with the mandate of R.A. No. 9346. It bears to stress that appellant is not eligible for parole.

2. CIVIL LAW; DAMAGES; MORAL DAMAGES, EXEMPLARY DAMAGES, CIVIL INDEMNITY AND TEMPERATE DAMAGES; AWARDED IN CASE AT BAR. — As for the award of damages, the Court sustains the appellate court's awards

of ₱50,000 as moral damages and ₱25,000 as exemplary damages,but increases its award of civil indemnity from ₱50,000 to ₱75,000, and awards temperate damages of ₱25,000 in lieu of the actual damages proven in the amount of ₱18,320. The award of ₱50,000 as moral damages is in order in view of the violent death of the victim and the resultant grief of his family. The award of exemplary damages of ₱25,000 is in order too, the crime having been committed with one or more aggravating circumstances. In line with prevailing jurisprudence, civil indemnity *ex delicto* is, however, increased to ₱75,000. And since the actual damages proven during the trial amount to less than ₱25,000, the same having totaled only ₱18,320, the award of temperate damages of ₱25,000 in lieu thereof is justified.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Along with Alex Malabana *alias Ka Aldrin*, Rodelio Verdagera *alias Ka Abel*, Nelson Cay *alias Ka Noel*, and one *Ka Marcel*, Generoso Rolida *y* Moreno *alias Ka David/ Ka Raquel* (appellant) was charged before the Regional Trial Court (RTC) of Gumaca, Quezon with Murder in an Information reading:

x x x x x x x x x

That on or about the 27th day of August, 2001, at Barangay San Isidro Ilaya, Municipality of General Luna, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with high powered firearms, M-14 and M-16, conspiring and confederating together and mutually helping one another, with intent to kill, with treachery and evident premeditation and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearms, one Froilan Roman *y* de Gala, thereby

inflicting upon the latter multiple gunshot wounds on different parts of his body, which directly caused his death.[1]

xxx xxx xxx

Only appellant was arraigned, however, as his co-accused had remained at large and the trial court ordered the case archived as to them.[2] Appellant pleaded not guilty.[3]

Through the combined testimonies of Marilyn Roman (Marilyn), the widow of Froilan Roman and daughters Pamela Roman (Pamela) and Maryann Roman (Maryann), the prosecution established the following version:[4]

At around 8:45 p.m. of August 27, 2001, while the victim and his family were asleep, somebody kicked the door of their house open. Four armed men immediately entered and went straight to the place where the victim and Marilyn were sleeping. Other men surrounded the house as the four who entered tied the hands of the victim with a rope, hit him on the chest with a rifle, and pulled him outside by his hair.

While kneeling and with one gun poked at his neck, the victim, then a member of a Citizens Armed Forces Geographical Unit (CAFGU) in General Luna, Quezon, begged for his life for the sake of his family. One of his assailants replied that the victim had taken one life, hence, he must pay it with his own. The victim's family thereafter heard gunshots, and the victim fell on the ground lifeless. The armed men then fired two shots in the air, exclaiming *"Mabuhay! Tagumpay ang NPA!"* (Long live the triumphant NPA!) and hurriedly left.

The victim's family positively identified appellant as one of the victim's assailants. Marilyn recognized appellant as he had no cover on his face, while Pamela and Maryann remembered him because of the scar on his face.

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[1] Records, p. 2.

[2] *Id.* at 19, 43.

[3] *Ibid.*

[4] TSN, August 12, 2004, pp. 3-7; TSN, April 22, 2004, pp. 3-7; TSN, June 16, 2004, pp. 3-6.

Marciano Endiape (Endiape), allegedly a former member of the New People's Army (NPA), also testified that the victim was assassinated for allegedly having guided military operatives in a raid on an NPA camp, which resulted in the death of two NPA members and the loss of their firearms.[5] He further stated that the killing of the victim was planned in a meeting held on August 20, 2001 at an NPA camp; and that appellant was one of those who attended the meeting and eventually left for the victim's residence in Pidac, General Luna, Quezon on August 24, 2001.[6] He went on to declare that those persons, including appellant, returned to the camp only on August 28, 2001, exultantly shouting, *"Tagumpay na naman ang NPA dahil may napatay na namang kalaban"* (The NPA is triumphant again as it just killed another enemy.)[7]

By the account of Dr. Constancia Mecija, Municipal Health Officer of General Luna, Quezon, her post-mortem examination of the victim showed that the cause of his death was severe hemorrhage secondary to multiple gunshot wounds.[8]

Upon the other hand, appellant, denying any knowledge of the incident, claimed that at about 8:35 p.m. on August 27, 2001, he was sleeping at his house with his mother in Don Juan Verceles, San Francisco, Quezon;[9] and that he did not know his co-accused Alex Malabana and the victim, as well as prosecution witnesses Pamela and Endiape.[10]

Branch 61 of the Gumaca, Quezon RTC crediting the version of the prosecution, held that the killing was attended by treachery, conspiracy, and evident premeditation, thus:

xxx xxx xxx

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[5] TSN, May 19, 2004, pp. 2-3.

[6] *Id.* at 4-6.

[7] *Ibid.*

[8] TSN, September 22, 2004, pp. 2-5.

[9] TSN, December 9, 2004, p. 4.

[10] *Id.* at 3-8.

The fact that high powered guns were used by the accused as testified to by the witness Pamela Roman (April 22, 2004, p. 4), the attack was made in the stillness of the night, the attack was so sudden and unexpected at the time the victim was asleep and what more he was tied with a rope and hit with their long firearm on his chest before he was shot successively which caused his instant death show clearly that treachery attended manifestly the killing in this case.

x x x x x x x x x

As treachery was conclusively established in this case, abuse of superiority of strength is hereby absorbed.

x x x x x x x x x

[T]he act of accused showed their unity of purpose, joint design to kill the victim following a consciously adopted plan. Conspiracy having been established the act of one is considered the act of all. [*People v. Abendan,* 360 SCRA 126 (2001)]

x x x x x x x x x

Evident premeditation appears to have been thoroughly and sufficiently established in the case at bench as shown from the testimony of Marcelino (*sic*) Endiape, a former active member of the NPA who formerly belongs to the group SY'P Rivas Buenavista, Quezon headed by Ka Marcel. The court relied heavily on his testimony being in a position to have acquired full knowledge of the same having been with the accused at the time he was an active member of NPA.

x x x x x x x x x

x x x The NPAs commissioned to undertake the execution of Froilan Roman, Ka Marcel, Ka Aldrin, Ka David, Ka Noel, and Ka Abel left Brgy. Malaya, General Luna on August 14, 2001 for Pidac, General Luna, Quezon precisely to kill the object their mission (*sic*) and in the evening of August 28, 2001 they returned to Brgy. Malaya from Brgy. Pidac, General Luna with jubilation and shouted "*Tagumpay na naman ang NPA dahil may napatay na namang kalaban*."

The evidence shows that there was sufficient lapse of time between the determination and the execution to allow the accused to reflect upon the consequences of their act. In this case, they determined to commit the crime on August 24, 2001 and the killing of Froilan Roman was made in the evening of August 27, 2001. Evidently, there

was indeed sufficient time for the accused to reflect on the consequences of the act. The essence of premeditation is that the execution of the criminal act is preceded by cool thought and reflection to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. [*People v. Bibat*, 290 SCRA 29 (1998)][11] (Underscoring supplied)

The trial court thus convicted appellant of Murder, by Judgment of May 30, 2005, disposing as follows:

> WHEREFORE AND IN VIEW OF ALL THE FOREGOING, the court finds accused GENEROSO ROLIDA *alias* Ka David and *alias* Ka Raquel guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentencing (*sic*) him to suffer the penalty of DEATH. Accused is ordered to pay the heirs of Froilan Roman the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages, exemplary damages in the amount of ₱30,000.00. Accused is further ordered to pay the amount of ₱18,320.00 as actual damages.
>
> In so far as ALEX MALABANA *alias* Ka Aldrin, Rodelio Verdagera *alias* Ka Abel, Nelson Cay *alias* Ka Noel, and one *alias* Ka Manuel (*sic*) are concerned, who are presently at large, case is hereby ordered ARCHIVED until their arrest. Let an *alias* warrant of arrest be issued for their apprehension.[12]

In his brief filed with the Court of Appeals to which the case was elevated on automatic review,[13] appellant argued that he was mistakenly identified by the victim's family which did not have ample opportunity to observe the faces of the malefactors in view of the rapid turn of events, as well as the shock and panic that had overcome them;[14] and that his alibi was not improbable, the location of his residence being borne out by the records; and that he did not flee, unlike his co-accused, indicates his innocent conscience.[15]

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[11] Records, pp. 239-246.

[12] *Id.* at 249.

[13] *Id.* at 251.

[14] CA *rollo*, pp. 69-71.

[15] *Id.* at 73-74.

The Solicitor General countered that there was no doubt as to the identity of appellant as one of the malefactors since Pamela and Maryann positively identified him through the scar on his left cheek;[16] and that appellant's alibi cannot prosper considering his failure to prove that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[17]

By Decision dated March 5, 2007,[18] the appellate court affirmed that of the trial court, with modification in that the penalty was reduced to *reclusion perpetua* pursuant to Republic Act (RA) No. 9346, and the award of exemplary damages was lowered to ₱25,000.00.[19] Thus it disposed:

> WHEREFORE, the judgment of the court *a quo* finding the accused guilty beyond reasonable doubt of the crime of murder qualified by treachery and with the aggravating circumstance of evident premeditation is hereby affirmed with modification in the sense that the penalty of DEATH is modified to *Reclusion Perpetua* pursuant to Republic Act 9346 which prohibits the imposition of the death penalty. The award of ₱30,000.00 as exemplary damages is likewise modified to ₱25,000.00. The rest of the awards are affirmed. The *alias* warrants of arrest for the apprehension of Alex Malabana *alias* Ka Aldrin, Rogelio Verdagera *alias* Ka Abel, Nelia Cay *alias* Ka Noel and one *alias* Ka Marcel stay.

Hence, this appeal.

In separate manifestations, appellant and the Solicitor General informed that they were no longer filing supplemental briefs, their respective positions having been adequately discussed in the Briefs they had filed with the appellate court.[20]

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[16] *Id.* at 138.

[17] *Id.* at 148.

[18] Penned by Associate Justice Monina Arevalo-Zenarosa, with the concurrence of Justices Marina L. Buzon and Edgardo F. Sundiam; CA *rollo,* pp. 166-190.

[19] CA *rollo,* pp. 189-190.

[20] *Rollo,* pp. 31-35.

In finding the existence of conspiracy, the trial and appellate courts found the collective acts of appellant and his cohorts before, during, and after the shooting of the victim as indicating the pursuit of a common design to kill, hence, the act of one is the act of all.

The trial and appellate courts also found the deliberate employment of high-powered guns and nocturnity to have obviated any opportunity for the victim to defend himself, hence their appreciation of the presence of treachery which absorbed the circumstance of abuse of superior strength.

Relying on the testimony of Endiape, both courts held that evident premeditation attended the killing, there having been a sufficient interval for cool thought and reflection between the time appellant and his group determined to commit the crime on August 24, 2001 when they left for the victim's residence, and the time that they actually executed the planned attack on August 27, 2001.

The trial and appellate courts thus found appellant guilty beyond reasonable doubt of Murder qualified by treachery and aggravated by evident premeditation.

This Court finds no compelling reason to rule otherwise. Parenthetically, the Court notes that appellant did not even present his mother to corroborate his claim of alibi.

With respect to the penalty, the Court finds the appellate court's imposition of *reclusion perpetua* to be in accord with the mandate of R.A. No. 9346.[21] It bears to stress that appellant is not eligible for parole.[22]

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[21] Section 2 of R.A. No. 9346 provides:

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.

[22] *Vide* Section 3 of R.A. No. 9346:

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of

As for the award of damages, the Court sustains the appellate court's awards of ₱50,000 as moral damages and ₱25,000 as exemplary damages, but increases its award of civil indemnity from ₱50,000 to ₱75,000, and awards temperate damages of ₱25,000 in lieu of the actual damages proven in the amount of ₱18,320.

The award of ₱50,000 as moral damages is in order in view of the violent death of the victim and the resultant grief of his family.[23] The award of exemplary damages of ₱25,000 is in order too, the crime having been committed with one or more aggravating circumstances.[24]

In line with prevailing jurisprudence, civil indemnity *ex delicto* is, however, increased to ₱75,000.[25] And since the actual damages proven during the trial amount to less than ₱25,000, the same having totaled only ₱18,320, the award of temperate damages of ₱25,000 in lieu thereof is justified.[26]

WHEREFORE, the March 5, 2007 Decision of the Court of Appeals affirming that of Branch 61 of the Gumaca, Quezon RTC is *MODIFIED* in that the award of civil indemnity is *INCREASED* to ₱75,000; that temperate damages in the amount of ₱25,000 are *AWARDED* in lieu of actual damages; and

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this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[23] *People v. Tubongbanua,* G.R. No. 171271, 31 August 2006, 500 SCRA 727, 743.

[24] *Ibid.*

[25] *People v. Tubongbanua, supra* at 742; *vide People v. Dela Cruz,* G.R. No.171272, June 7, 2007, 523 SCRA 433, 452.

[26] *Vide People v. Villanueva,* G.R. No. 139177, August 11, 2003, 408 SCRA 571, 581-582, wherein the Court held:

> [W]hen actual damages proven by receipts during the trial amount to less than ₱25,000, *as in this case*, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

that appellant is not eligible for parole. In all other respects, the challenged Decision is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Brion,* and *Peralta,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 178827. March 4, 2009]

JEROMIE D. ESCASINAS and EVAN RIGOR SINGCO, *petitioners, vs.* **SHANGRI-LA'S MACTAN ISLAND RESORT and DR. JESSICA J.R. PEPITO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; MEDICAL, DENTAL AND OCCUPATIONAL SAFETY; EMERGENCY MEDICAL AND DENTAL SERVICES; ENGAGEMENT OF FULL-TIME NURSES AS REGULAR EMPLOYEES OF A COMPANY EMPLOYING NOT LESS THAN FIFTY WORKERS, NOT REQUIRED; CASE AT BAR. — Art. 157 does not require the engagement of full-time nurses as regular employees of a company employing not less than 50 workers. Thus, the Article provides: "ART. 157. *Emergency medical and dental services*. — **It shall be the duty of every**

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[*] Additional member per Special Order No. 580 dated March 2, 2009 in lieu of Justice Dante O. Tinga who is on official leave. Justice Antonio Eduardo B. Nachura, who was earlier designated as an additional member per Special Order No. 571, will take no part in its deliberation being then the Solicitor General.

[**] Additional member per Special Order No. 572 dated February 12, 2009 in lieu of Justice Presbitero J. Velasco, Jr. who is on official leave.

employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of: x x x (b) **The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and** x x x In cases of hazardous workplaces, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. **Where the undertaking is nonhazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency."** Under the foregoing provision, Shangri-la, which employs more than 200 workers, is mandated to **"furnish"** its employees with the services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic which means that **it should provide or make available such medical and allied services to its employees, not necessarily to hire or employ a service provider.** As held in *Philippine Global Communications vs. De Vera:* "x x x **while it is true that the provision requires employers to engage the services of medical practitioners in certain establishments depending on the number of their employees, nothing is there in the law which says that medical practitioners so engaged be actually hired as employees,** adding that the law, as written, only requires the employer **"to retain,"** not employ, a part-time physician who needed to stay in the premises of the non-hazardous workplace for two (2) hours."

2. ID.; ID.; ID.; ID.; ID.; THE PHRASE "SERVICES OF A FULL-TIME REGISTERED NURSE" IN ARTICLE 157 OF THE LABOR CODE, CONSTRUED. — The term "full-time" in Art. 157 cannot be construed as referring to the type of employment of the person engaged to provide the services, for Article 157 must *not* be read alongside Art. 280 in order to vest employer-employee relationship on the employer and the person so engaged. So *De Vera* teaches: "x x x For, we take it that any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's

business, **even without being hired as an employee**. This set-up is precisely true in the case of an independent contractorship as well as in an agency agreement. *Indeed*, **Article 280 of the Labor Code, quoted by the appellate court, is not the yardstick for determining the existence of an employment relationship. As it is, the provision merely distinguishes between two (2) kinds of employees,** *i.e.*, **regular and casual.** x x x" The phrase "services of a full-time registered nurse" should thus be taken to refer to the kind of services that the nurse will render in the company's premises and to its employees, not the manner of his engagement.

3. ID.; LABOR RELATIONS; INDEPENDENT AND PERMISSIBLE CONTRACTOR RELATIONSHIP; HOW DETERMINED. — The existence of an independent and permissible contractor relationship is generally established by considering the following determinants: whether the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

4. ID.; ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS. — [E]xistence of an employer-employee relationship is established by the presence of the following determinants: (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, with the latter assuming primacy in the overall consideration.

APPEARANCES OF COUNSEL

Escasinas Partners and Company for petitioners.

Angara Abello Concepcion Regala & Cruz for Shangri-La's Mactan Island Resort.

Alonzo & Banaag Law Offices for Dr. J.J. Pepito.

D E C I S I O N

CARPIO MORALES, *J.*:

Registered nurses Jeromie D. Escasinas and Evan Rigor Singco (petitioners) were engaged in 1999 and 1996, respectively, by Dr. Jessica Joyce R. Pepito (respondent doctor) to work in her clinic at respondent Shangri-la's Mactan Island Resort (Shangri-la) in Cebu of which she was a retained physician.

In late 2002, petitioners filed with the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VII (NLRC-RAB No. VII) a complaint[1] for regularization, underpayment of wages, non-payment of holiday pay, night shift differential and 13th month pay differential against respondents, claiming that they are regular employees of Shangri-la. The case was docketed as RAB Case No. 07-11-2089-02.

Shangri-la claimed, however, that petitioners were not its employees but of respondent doctor whom it retained via Memorandum of Agreement (MOA)[2] pursuant to Article 157 of the Labor Code, as amended.

Respondent doctor for her part claimed that petitioners were already working for the previous retained physicians of Shangri-la before she was retained by Shangri-la; and that she maintained petitioners' services upon their request.

By Decision[3] of May 6, 2003, Labor Arbiter Ernesto F. Carreon declared petitioners to be regular employees of Shangri-la. The Arbiter thus ordered Shangri-la to grant them the wages and benefits due them as regular employees from the time their services were engaged.

In finding petitioners to be regular employees of Shangri-la, the Arbiter noted that they usually perform work which is

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[1] Records, pp. 1-2.

[2] *Id.* at 44-49.

[3] *Id.* at 221-227.

necessary and desirable to Shangri-la's business; that they observe clinic hours and render services only to Shangri-la's guests and employees; that payment for their salaries were recommended to Shangri-la's Human Resource Department (HRD); that respondent doctor was Shangri-la's "in-house" physician, hence, also an employee; and that the MOA between Shangri-la and respondent doctor was an "insidious mechanism in order to circumvent [the doctor's] tenurial security and that of the employees under her."

Shangri-la and respondent doctor appealed to the NLRC. Petitioners appealed too, but only with respect to the non-award to them of some of the benefits they were claiming.

By Decision[4] dated March 31, 2005, the NLRC granted Shangri-la's and respondent doctor's appeal and dismissed petitioners' complaint for lack of merit, it finding that no employer-employee relationship exists between petitioner and Shangri-la. In so deciding, the NLRC held that the Arbiter erred in interpreting Article 157 in relation to Article 280 of the Labor Code, as what is required under Article 157 is that the employer should provide the services of medical personnel to its employees, but nowhere in said article is a provision that nurses are required to be employed; that contrary to the finding of the Arbiter, even if Article 280 states that if a worker performs work usually necessary or desirable in the business of the employer, he cannot be automatically deemed a regular employee; and that the MOA amply shows that respondent doctor was in fact engaged by Shangri-la on a retainer basis, under which she could hire her own nurses and other clinic personnel.

Brushing aside petitioners' contention that since their application for employment was addressed to Shangri-la, it was really Shangri-la which hired them and not respondent doctor, the NLRC noted that the applications for employment were

[4] *Rollo*, pp. 73-82. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

made by persons who are not parties to the case and were not shown to have been actually hired by Shangri-la.

On the issue of payment of wages, the NLRC held that the fact that, for some months, payment of petitioners' wages were recommended by Shangri-la's HRD did not prove that it was Shangri-la which pays their wages. It thus credited respondent doctor's explanation that the recommendations for payment were based on the billings she prepared for salaries of additional nurses during Shangri-la's peak months of operation, in accordance with the retainership agreement, the guests' payments for medical services having been paid directly to Shangri-la.

Petitioners thereupon brought the case to the Court of Appeals which, by Decision[5] of May 22, 2007, affirmed the NLRC Decision that no employer-employee relationship exists between Shangri-la and petitioners. The appellate court concluded that all aspects of the employment of petitioners being under the supervision and control of respondent doctor and since Shangri-la is not principally engaged in the business of providing medical or healthcare services, petitioners could not be regarded as regular employees of Shangri-la.

Petitioners' motion for reconsideration having been denied by Resolution[6] of July 10, 2007, they interposed the present recourse.

Petitioners insist that under Article 157 of the Labor Code, Shangri-la is required to hire a full-time registered nurse, apart from a physician, hence, their engagement should be deemed as regular employment, the provisions of the MOA notwithstanding; and that the MOA is contrary to public policy as it circumvents tenurial security and, therefore, should be struck down as being void *ab initio*. At most, they argue, the MOA is a mere job contract.

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[5] CA *rollo*, pp. 262-269. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Antonio L. Villamor and Stephen C. Cruz.

[6] *Id.* at 63.

And petitioners maintain that respondent doctor is a labor-only contractor for she has no license or business permit and no business name registration, which is contrary to the requirements under Secs. 19 and 20 of the Implementing Rules and Regulations of the Labor Code on sub-contracting.

Petitioners add that respondent doctor cannot be a legitimate independent contractor, lacking as she does in substantial capital, the clinic having been set-up and already operational when she took over as retained physician; that respondent doctor has no control over how the clinic is being run, as shown by the different orders issued by officers of Shangri-la forbidding her from receiving cash payments and several purchase orders for medicines and supplies which were coursed thru Shangri-la's Purchasing Manager, circumstances indubitably showing that she is not an independent contractor but a mere agent of Shangri-la.

In its Comment,[7] Shangri-la questions the Special Powers of Attorneys (SPAs) appended to the petition for being inadequate. On the merits, it prays for the disallowance of the petition, contending that it raises factual issues, such as the validity of the MOA, which were never raised during the proceedings before the Arbiter, albeit passed upon by him in his Decision; that Article 157 of the Labor Code does not make it mandatory for a covered establishment to employ health personnel; that the services of nurses is not germane nor indispensable to its operations; and that respondent doctor is a legitimate individual independent contractor who has the power to hire, fire and supervise the work of the nurses under her.

The resolution of the case hinges, in the main, on the correct interpretation of Art. 157 *vis a vis* Art. 280 and the provisions on permissible job contracting of the Labor Code, as amended.

The Court holds that, contrary to petitioners' postulation, **Art. 157 does not require the engagement of full-time**

[7] *Rollo,* pp. 181-235.

nurses as regular employees of a company employing not less than 50 workers. Thus, the Article provides:

ART. 157. *Emergency medical and dental services*. — **It shall be the duty of every employer to furnish his employees** in any locality with free medical and dental attendance and facilities consisting of:

(a) The **services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces**, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order hazardous workplaces for purposes of this Article;

(b) **The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300)**; and

(c) The services of a full-time physician, dentist and full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

In cases of hazardous workplaces, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. **Where the undertaking is nonhazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency.** (Emphasis and underscoring supplied)

Under the foregoing provision, Shangri-la, which employs more than 200 workers, is mandated to "**furnish**" its employees

with the services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic which means that **it should provide or make available such medical and allied services to its employees, not necessarily to hire or employ a service provider**. As held in *Philippine Global Communications vs. De Vera:*[8]

x x x **while it is true that the provision requires employers to engage the services of medical practitioners in certain establishments depending on the number of their employees, nothing is there in the law which says that medical practitioners so engaged be actually hired as employees**, adding that the law, as written, only requires the employer "**to retain,**" not employ, a part-time physician who needed to stay in the premises of the non-hazardous workplace for two (2) hours. (Emphasis and underscoring supplied)

The term "full-time" in Art. 157 cannot be construed as referring to the type of employment of the person engaged to provide the services, for Article 157 must *not* be read alongside Art. 280[9] in order to vest employer-employee relationship on the employer and the person so engaged. So *De Vera* teaches:

x x x For, we take it that any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's business, **even without being hired as an**

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[8] G.R. No. 157214, June 7, 2005, 459 SCRA 260, 275.

[9] Art. 280. The provisions of written agreement to the contrary **notwithstanding and regardless of the oral agreements of the parties**, an employment shall be deemed to be regular where the employee has been engaged to perform in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.'

'**An employment shall be deemed to be casual if it is not covered by the preceding paragraph**: Provided, That, **any employee who has rendered at least one (1) year of service**, whether such is continuous or broken, **shall be considered a regular with respect to the activity in which he is employed** and his employment shall continue while such activity exists.

employee. This set-up is precisely true in the case of an independent contractorship as well as in an agency agreement. **Indeed, Article 280 of the Labor Code, quoted by the appellate court, is not the yardstick for determining the existence of an employment relationship. As it is, the provision merely distinguishes between two (2) kinds of employees, *i.e.*, regular and casual**. x x x[10] (Emphasis and underscoring supplied)

The phrase "services of a full-time registered nurse" should thus be taken to refer to the kind of services that the nurse will render in the company's premises and to its employees, not the manner of his engagement.

As to whether respondent doctor can be considered a legitimate independent contractor, the pertinent sections of DOLE Department Order No. 10, series of 1997, illuminate:

Sec. 8. *Job contracting.* — There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. *Labor-only contracting.* — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) **Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials**; and

(2) **The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed**.

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[10] *Supra* note at 274.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers. (Emphasis supplied)

The existence of an independent and permissible contractor relationship is generally established by considering the following determinants: whether the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[11]

On the other hand, existence of an employer-employee relationship is established by the presence of the following determinants: (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, with the latter assuming primacy in the overall consideration.[12]

Against the above-listed determinants, the Court holds that respondent doctor is a legitimate independent contractor. That

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[11] *DOLE Philippines, Inc. v. Esteva, et al.*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 376.

[12] *Corporal v. NLRC*, G.R. No. 129315, October 2, 2000, 341 SCRA 658, 666.

Shangri-la provides the clinic premises and medical supplies for use of its employees and guests does not necessarily prove that respondent doctor lacks substantial capital and investment. Besides, the maintenance of a clinic and provision of medical services to its employees is required under Art. 157, which are not directly related to Shangri-la's principal business – operation of hotels and restaurants.

As to payment of wages, respondent doctor is the one who underwrites the following: salaries, SSS contributions and other benefits of the staff[13]; group life, group personal accident insurance and life/death insurance[14] for the staff with minimum benefit payable at 12 times the employee's last drawn salary, as well as value added taxes and withholding taxes, sourced from her ₱60,000.00 monthly retainer fee and 70% share of the service charges from Shangri-la's guests who avail of the clinic services. It is unlikely that respondent doctor would report petitioners as workers, pay their SSS premium as well as their wages if they were not indeed her employees.[15]

With respect to the supervision and control of the nurses and clinic staff, it is not disputed that a document, "Clinic Policies and Employee Manual"[16] claimed to have been prepared by respondent doctor exists, to which petitioners gave their conformity[17] and in which they acknowledged their co-terminus employment status. It is thus presumed that said document, and not the employee manual being followed by Shangri-la's regular workers, governs how they perform their respective tasks and responsibilities.

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[13] *Vide* SSS Employment Report and Salary/Calamity/Educational/ Emergency Loan Collection List, records, pp. 214-219.

[14] *Vide* various Statements of Account re healthcare and insurance, records, pp. 67-71.

[15] *Corporal v. NLRC, supra* at 668.

[16] Records, pp. 50-59.

[17] *Id.* at 60-61.

Contrary to petitioners' contention, the various office directives issued by Shangri-la's officers do not imply that it is Shangri-la's management and not respondent doctor who exercises control over them or that Shangri-la has control over how the doctor and the nurses perform their work. The letter[18] addressed to respondent doctor dated February 7, 2003 from a certain Tata L. Reyes giving instructions regarding the replenishment of emergency kits is, at most, administrative in nature, related as it is to safety matters; while the letter[19] dated May 17, 2004 from Shangri-la's Assistant Financial Controller, Lotlot Dagat, forbidding the clinic from receiving cash payments from the resort's guests is a matter of financial policy in order to ensure proper sharing of the proceeds, considering that Shangri-la and respondent doctor share in the guests' payments for medical services rendered. In fine, as Shangri-la does not control how the work should be performed by petitioners, it is not petitioners' employer.

WHEREFORE, the petition is hereby *DENIED*. The Decision of the Court of Appeals dated May 22, 2007 and the Resolution dated July 10, 2007 are *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Nachura,[*] *Brion,* and *Peralta,*[**] *JJ.,* concur.

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[18] CA *rollo,* p. 71.

[19] *Id.* at 72.

[*] Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga who is on official leave.

[**] Additional member per Special Order No. 572 dated February 12, 2009 in lieu of Justice Presbitero J. Velasco, Jr. who is on official leave.

THIRD DIVISION

[G.R. No. 180762. March 4, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CARLITO DE LEON, BIEN DE LEON, CORNELIO *"AKA"* NELIO CABILDO, and FILOTEO DE LEON,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE 1613; ARSON; ELEMENTS. — Section 3 of Presidential Decree No. 1613 amending the law on arson provides: Sec. 3. Other Cases of Arson. — The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if the property burned is any of the following: 1. x x x 2. Any inhabited house or dwelling; x x x Section 4 of the same law provides that if the crime of arson was committed by a syndicate, *i.e.*, if it is planned or carried out by a group of three or more persons, the penalty shall be imposed in its maximum period. Under the following provision, the elements of arson are: (a) there is intentional burning; and, (b) what is intentionally burned is an inhabited house or dwelling. The appellate court correctly found that the prosecution was able to prove beyond reasonable doubt the presence of the two essential elements of the offense.

2. ID.; ID.; ID.; INTENT; MAY BE AN INGREDIENT OF THE CRIME OF ARSON AND IT MAY BE INFERRED FROM THE ACTS OF THE ACCUSED. — Although intent may be an ingredient of the crime of arson, it may be inferred from the acts of the accused. There is a presumption that one intends the natural consequences of his act; and when it is shown that one has deliberately set fire to a building, the prosecution is not bound to produce further evidence of his wrongful intent. If there is an eyewitness to the crime of arson, he can give in detail the acts of the accused. When this is done the only substantial issue is the credibility of the witness.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY THE TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL. — It is well-entrenched in

this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial judge was in a better position to determine their credibility. x x x Findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath — all of which are useful aids for an accurate determination of a witness' honesty and sincerity.

4. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME. — Positive identification, where categorical and consistent, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law. The appellants had not shown that it was physically impossible for them to be present at the time and place of the crime.

5. ID.; ID.; *CORPUS DELICTI*; DEFINED. — Proof of the *corpus delicti* is indispensable in the prosecution of arson, as in all kinds of criminal offenses. *Corpus delicti* means the substance of the crime; it is the fact that a crime has actually been committed. In arson, the *corpus delicti* is generally satisfied by proof of the bare occurrence of the fire, *e.g.*, the charred remains of a house burned down and of its having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, may be enough to prove the *corpus delicti* and to warrant conviction. The *corpus delicti* has been satisfactorily proven in the instant case.

6. CRIMINAL LAW; ARSON; PENALTY. — The appellate court correctly imposed the penalty in its maximum period, *i.e.*,

reclusion perpetua considering the presence of the special aggravating circumstance. The crime was committed by a syndicate since it was carried out by a group of three or more persons.

7. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — On the matter of damages, the appellate court likewise correctly awarded temperate damages in the amount of ₱2,000.00. In view of the presence of the special aggravating circumstance, exemplary damages in the amount of ₱20,000.00 is likewise appropriate.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Abesamis Law Offices for appellants.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals dated May 21, 2007 in CA-G.R. CR No. 26390 which affirmed with modification the Decision of the Regional Trial Court of Nueva Ecija, Branch 35[2] finding herein appellants guilty beyond reasonable doubt of the crime of arson and sentencing them to suffer the penalty of *reclusion perpetua* and to pay the heirs of the private complainant ₱2,000.00 as temperate damages and ₱20,000.00 as exemplary damages.

On June 14, 1989, an Information[3] was filed charging Gaudencio Legaspi, Carlito de Leon, Bien de Leon, Cornelio Cabildo and

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[1] *Rollo*, pp. 2-22; penned by Associate Justice Japar B. Dimaampao and concurred in by Presiding Justice Ruben T. Reyes (now retired Associate Justice of the Supreme Court) and Associate Justice Mario L. Guariña III.

[2] CA *rollo*, pp. 51-55; penned by Judge Dorentino Z. Floresta.

[3] Records, p. 71.

Filoteo de Leon with the crime of arson. The accusatory portion of the Information reads:

> That on or about the 5th day of April, 1986, in the Municipality of Peñaranda, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and helping one another, did then and there, wilfully, unlawfully and feloniously burn or set on fire the house of one RAFAEL MERCADO, an inhabited house or dwelling, to the damage and prejudice of said Rafael Mercado in an amount that may be awarded to him under the Civil Code of the Philippines.
>
> CONTRARY TO LAW.[4]

Gaudencio Legaspi died on February 5, 1987 prior to his arraignment.[5]

Appellants Bien de Leon,[6] Carlito de Leon,[7] Filoteo de Leon,[8] and Nelio Cabildo[9] were subsequently arraigned and they all pleaded not guilty to the charge.

The facts of the case are as follows:

At around 8:30 in the evening of April 5, 1986, Aquilina Mercado Rint (Aquilina) and her sister Leonisa Mercado (Leonisa), together with their nephew Narciso Mercado Jr., (Junior) were inside a hut owned by their father Rafael Mercado[10] (Rafael) located on a *tumana* in Polillo, San Josef, Peñaranda, Nueva Ecija. The loud and insistent barking of their dog prompted Aquilina to peep through the window and saw five men

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[4] *Id*.

[5] *Id.* at 119.

[6] Arraigned on April 19, 1990; see records, p. 136.

[7] Arraigned on May 9, 1990; see records, p. 140.

[8] *Id*.

[9] Arraigned on July 10, 1990; see records, p. 162.

[10] Died on February 23, 1988; Certification dated January 22, 1990 from the Office of the Local Civil Registrar of Peñaranda, Nueva Ecija. Records, p. 117.

approaching the premises whom she recognized as Gaudencio Legaspi and herein appellants. Aquilina and Leonisa hurriedly went out of the hut and hid behind a pile of wood nearby while Junior was dispatched to call for help.

From their hiding place, they saw appellants surround the hut[11] and set to fire the cogon roofing.[12] While the hut was burning, Leonisa grabbed a flashlight from her sister and focused the same at the group in order to see them more clearly. Upon seeing a light focused on them, Gaudencio ordered the others to leave and the men immediately fled the premises.[13] By the time Junior arrived with his uncles, the hut was already razed to the ground.

On April 6, 1986, Police Officer Lucio Mercado (Lucio) conducted an investigation at the scene of the crime and saw a big wood still on fire. A certain Julio took pictures of the remains of the hut.[14]

Aquilina and Leonisa valued the hut at ₱3,000.00 and claimed that a pair of earrings, some beddings, rice, ₱1,500.00 in cash and plenty of wood were also lost in the fire.[15] They also testified that prior to the incident, appellants had been to the premises, destroyed the plants, the fence and a hut which was first built therein. Appellants likewise physically attacked their father and issued threats that if he would not give up his claim on the land, something untoward would happen to him; and that their father Rafael filed several cases for Malicious Mischief, Forcible Entry and Serious Physical Injuries against appellants.

Appellants denied the charge against them.

Carlito alleged that on the day of the alleged incident, he was working in Cavite where he had been staying for a year

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[11] TSN, April 4, 1995, p. 4.

[12] TSN, May 4, 1993, p. 9; TSN, April 4, 1995, p. 5.

[13] *Id.* at 10; *Id*. at 6-7.

[14] *Id.* at 14; *Id*. at 7.

[15] *Id*.

with his family; that his uncle Gaudencio was originally in possession of the *tumana* contrary to Rafael's claims; that his uncle used to plant vegetables and make charcoal therein until 1975 when he took over upon the latter's request; and that when Gaudencio passed away in 1987, he applied for a patent over the *tumana* with the Bureau of Lands.[16]

Carlito also alleged that there was actually no structure on the premises because Rafael's attempt to build a hut was foiled by his helper, herein appellant Nelio.[17] On cross-examination however, he admitted that on March 12, 1986, he destroyed the first hut constructed by Rafael on the subject *tumana* when the prosecution confronted him with evidence which showed that he was found guilty of Malicious Mischief in Criminal Case No. 1985 filed against him by Rafael before the Municipal Trial Court of Peñaranda.[18]

Nelio testified that on the day of the incident, the appellants were in their respective homes and could not have gone to the *tumana* to commit the crime as charged; that the burnt parts depicted in the pictures presented by the prosecution were actually parts of tree trunks turned to charcoal; and that the cogon and bamboo shown in the pictures were materials brought by Rafael into the landholding during the latter's unsuccessful attempt to build a hut on the *tumana*.[19]

Bien also vehemently denied the charges against him and attributed the same to complainants' desire to grab the *tumana* which rightfully belongs to his mother. He testified that since 1982, he has been living in Rizal, Nueva Ecija which is about 35 kilometers away from Peñaranda.[20] For his part, Filoteo corroborated the claims made by his co-appellants.[21]

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[16] TSN, August 22, 1995, pp. 4-5.

[17] *Id.* at 10.

[18] Records, p. 54.

[19] TSN, October 24, 1995, pp. 5-6.

[20] TSN, March 26, 1996, pp. 2-3; 5.

[21] *Id.* at 5-6.

On December 14, 2001, the trial court rendered its decision, thus:

In the light of the foregoing, the prosecution had established the guilt of all the accused Carlito de Leon, Bien de Leon, Cornelio "*aka*" Nelio Cabildo and Filoteo de Leon beyond reasonable doubt for the crime of arson, and they are hereby sentenced to an indeterminate prison term of 10 years and 1 day of *prision mayor*, as minimum, to 14 years and one (1) day of *reclusion temporal*, as maximum, and to pay jointly and severally the heirs of Rafael Mercado the sum of ₱3,000.00 representing the value of the burned hut.

SO ORDERED.[22]

Appellants appealed before the Court of Appeals which rendered the herein assailed Decision affirming with modification the decision of the court *a quo*, thus:

WHEREFORE, the appealed Decision is hereby AFFIRMED with MODIFICATION. Accused-appellants Carlito de Leon, Bien de Leon, Cornelio Cabildo and Filoteo de Leon are hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of private complainant Rafael Mercado the sum of Php2,000 as temperate damages and Php20,000 as exemplary damages. Costs against accused-appellants.

SO ORDERED.[23]

Hence, this appeal.

Section 3 of Presidential Decree No. 1613[24] amending the law on arson provides:

Sec. 3. Other Cases of Arson. — The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if the property burned is any of the following:

1. x x x
2. Any inhabited house or dwelling;

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

[23] *Rollo*, pp. 21-22.

[24] March 7, 1979.

xxx xxx xxx

Section 4 of the same law provides that if the crime of arson was committed by a syndicate, *i.e.*, if it is planned or carried out by a group of three or more persons, the penalty shall be imposed in its maximum period.

Under the following provision, the elements of arson are: (a) there is intentional burning; and, (b) what is intentionally burned is an inhabited house or dwelling. The appellate court correctly found that the prosecution was able to prove beyond reasonable doubt the presence of the two essential elements of the offense.

Although intent may be an ingredient of the crime of arson, it may be inferred from the acts of the accused. There is a presumption that one intends the natural consequences of his act; and when it is shown that one has deliberately set fire to a building, the prosecution is not bound to produce further evidence of his wrongful intent.[25] If there is an eyewitness to the crime of arson, he can give in detail the acts of the accused. When this is done the only substantial issue is the credibility of the witness.[26]

In the instant case, both the trial court and the Court of Appeals, found the testimonies of witnesses Aquilina and Leonisa worthy of credence, thus:

> The inconsistencies and contradictions presented in the case at bench do not detract from the fact that Rafael's house was intentionally burned by accused-appellants who were positively identified by witnesses Aquilina and Leonisa. In the face of these positive declarations, accused-appellants' puerile attempt to discredit them crumples into dust.[27]

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[25] *People v. Soriano*, G.R. No. 142565, July 29, 2003, 407 SCRA 367, 373, citing Curtis, *A Treaty on the Law of Arson* (1st ed., 1986), Sec. 283, p. 303.

[26] *Id.*, Sec. 287, p. 307.

[27] *Rollo*, p. 16.

It is well-entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial judge was in a better position to determine their credibility.[28]

The testimony of Aquilina that she witnessed the burning of her father's hut by appellants is positive and categorical, thus:

ATTY. BAUTO:

Q. Where were you when according to you they burned the house of your father? that house where you were residing?
A. I was in the tumana, sir.

Q. In the house or outside the house?
A. Outside of the house, sir.

Q. Why were you outside of the house?
A. When they were arriving or entering the premises of the house of my father or the tumana, our dog barked and we peeped thru the window, sir.

Q. What did you see?
A. We saw that men are coming, sir.

Q. How many men are coming?
A. Five men, sir.

Q. Were you able to recognize them when they were approaching the house?
A. Yes sir we recognize them.

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[28] *People v. Clidoro*, G.R. No. 143004, April 9, 2003, 401 SCRA 149, 154.

Q. What did you do?
A. We went outside of the house, sir.

Q. Where did you go?
A. We hid ourselves behind the files (*sic*) of wood, sir.

Q. How far is that file (*sic*) of wood from the house of your father?
A. More or less seven meters, sir.

Q. Why did you, in the first place, go out of the house when you saw them coming?
A. Because we wanted to hide, sir.

Q. Why were you apprehensive?
A. Because they were our adversary, sir. (*Kalaban po namin sila.*)

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Q. Who were with you when you went out of the house?
A. Only my sister Leonisa because I already instructed my nephew to go to our house when we noticed them coming and I instructed him to fetch my brothers, sir.

Q. When you were already behind the files (*sic*) of wood what happened next?
A. They surrounded our house and they lighted it up with match, sir. (*Pinaikutan po nila ang aming bahay at sinilaban.*)

Q. Who first lighted a match for purposes of burning the house?
A. Gaudencio Legaspi, sir.

Q. And what did the others do after Gaudencio Legaspi lighted a match?
A. They also lighted their matches, sir.

COURT:

Q. You mean the five had their matches at the time?
A. Yes, sir.

xxx xxx xxx

Q. What portion of the house was lighted first?

A. The cogon roofing of the hut, sir. That was the portion that could be easily burned.[29]

Positive identification, where categorical and consistent, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law. The appellants had not shown that it was physically impossible for them to be present at the time and place of the crime.[30]

Thus, we find no reason to disturb the trial court's reliance on the testimony of the prosecution witnesses. Findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath — all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[31]

Proof of the *corpus delicti* is indispensable in the prosecution of arson, as in all kinds of criminal offenses. *Corpus delicti* means the substance of the crime; it is the fact that a crime has actually been committed. In arson, the *corpus delicti* is generally satisfied by proof of the bare occurrence of the fire, *e.g.*, the charred remains of a house burned down and of its having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, may be enough to prove the *corpus delicti* and to warrant conviction.[32] The *corpus delicti* has been satisfactorily proven in the instant case.

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[29] TSN, May 4, 1993, pp. 7-9.

[30] *People v. Dela Pena, Jr.*, G.R. No. 183567, January 19, 2009.

[31] *Id*.

[32] *People v. Gonzalez*, G.R. No. 180448, July 28, 2008.

The appellate court correctly imposed the penalty in its maximum period, *i.e.*, *reclusion perpetua* considering the presence of the special aggravating circumstance. The crime was committed by a syndicate since it was carried out by a group of three or more persons.

On the matter of damages, the appellate court likewise correctly awarded temperate damages in the amount of ₱2,000.00. In view of the presence of the special aggravating circumstance, exemplary damages in the amount of ₱20,000.00 is likewise appropriate.

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR No. 26390, finding appellants Carlito de Leon, Bien de Leon, Cornelio Cabildo and Filoteo de Leon guilty beyond reasonable doubt of the crime of arson, sentencing them to suffer the penalty *reclusion perpetua* and ordering them to pay the heirs of private complainant Rafael Mercado ₱2,000.00 as temperate damages and ₱20,000.00 as exemplary damages, is *AFFIRMED*.

SO ORDERED.

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

[*] In lieu of Associate Justice Ma. Alicia Austria-Martinez, per Special Order No. 568 dated February 12, 2009.

THIRD DIVISION

[G.R. No. 181525. March 4, 2009]

P'CARLO A. CASTILLO, *petitioner*, *vs.* **MANUEL TOLENTINO,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COMPUTATION OF TIME; HOW TO COMPUTE TIME.— x x x In computing any period of time prescribed or allowed by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included; if the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday, the time shall not run until the next working day.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 3844; CONSENT OF THE AGRICULTURAL LESSOR MUST BE OBTAINED BEFORE THE AGRICULTURAL LESSEE MAY USE THE LEASEHOLD FOR A PURPOSE OTHER THAN WHAT HAD BEEN AGREED UPON.— Section 32 of R.A. No. 3844 specifically requires notice to and consent of the agricultural lessor before the agricultural lessee may embark upon the construction of a permanent irrigation system. It is only when the former refuses to bear the expenses of construction that the latter may choose to shoulder the same. More importantly, any change in the use of tillable land in the leasehold, *e.g.* through the construction of a sizeable water reservoir, impacts upon the agricultural lessor's share in the harvest, which is the only consideration he receives under the agrarian law. This being the case, before the agricultural lessee may use the leasehold for a purpose other than what had been agreed upon, the consent of the agricultural lessor must be obtained, lest he be dispossessed of his leasehold.

3. ID.; ID.; PURPOSE; INTERPRETATION.— Agrarian laws were enacted to help small farmers uplift their economic status by providing them with a modest standard of living sufficient to meet their needs for food, clothing, shelter and other basic necessities. It provides the answer to the urgent need to alleviate

the lives of the vast number of poor farmers in our country. Yet, despite such laws, the majority of these farmers still live on a hand-to-mouth existence. This can be attributed to the fact that these agrarian laws have never really been effectively implemented. Certain individuals have continued to prey on the disadvantaged, and as a result, the farmers who are intended to be protected and uplifted by the said laws find themselves back in their previous plight or even in a more distressing situation. R.A. No. 3844, or the Agricultural Land Reform Code, was enacted by Congress to institute land reforms in the Philippines. It was passed to establish owner-cultivatorship and the family size farm as the basis of Philippine agriculture; to achieve a dignified existence for the small farmers free from pernicious industrial restraints and practices; as well as to make the small farmers more independent, self-reliant and responsible citizens and a source of genuine strength in our democratic society. Yet, while the foregoing holds true, agrarian laws were established in light of the social justice precept of the Constitution and in the exercise of the police power of the state to promote the *common* weal. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute would automatically be decided in favor of labor. The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. R.A. 3844 and R.A. 6389, being social legislations, are designed to promote economic and social stability and must be interpreted liberally to give full force and effect to their clear intent, not only in favor of the tenant-farmers but also of landowners. While our agrarian laws give much leeway – by way of rights, benefits and privileges – to the landless and those who merely till lands belonging to others, lack of deference, disrespect, ingratitude, an unbecoming behavior toward the lessors and landowners, as well as a blatant abuse of their rights, are never free adjuncts. These cannot find favor with the Court.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance for petitioner.
Venturanza Law Office for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the September 28, 2007 Decision[1] of the Court of Appeals in CA-G.R. SP No. 88738,[2] which declared as final and executory the January 22, 1999 Decision of the Presiding Adjudicator in DARAB Case No. IV-ORM-0064-95 and ordered the petitioner's ejectment from the subject leasehold, as well as the removal of the concrete reservoir and dike which the latter constructed thereon. Also assailed is the January 23, 2008 Resolution[3] denying the motion for reconsideration.

The facts of the case as found by the Court of Appeals are as follows:

(*Manuel*) TOLENTINO (*herein respondent*) is the owner of two (2) parcels of agricultural land with a total area of 44,275 square meters situated at Sta. Isabel, Calapan, Oriental Mindoro and covered by Transfer Certificate of Title (TCT) No. RT-114 (T-71693) and TCT No. T-8989. He is also the administrator of another parcel of agricultural land, approximately 39,274 square meters in area owned and titled in the name of petitioner's brother Eliseo V. Tolentino.

(*Petitioner P'Carlo*) CASTILLO is an agricultural lessee of said parcels of land under an agreement that he will till and cultivate the land and pay (*TOLENTINO*) a total of eleven (11) cavanes per hectare every harvest season.

On April 25, 1995, x x x CASTILLO wrote a letter to the Provincial Agrarian Reform Office (PARO) informing the said office of (*his*) intention to construct a concrete water reservoir with a total area of 2,000 square meters together with a one-meter high dike.

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[1] *Rollo*, pp. 33-44; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[2] Entitled "*Manuel Tolentino v. Department of Agrarian Reform Adjudication Board and Pablo Carlo Castillo*."

[3] *Rollo*, p. 32.

x x x TOLENTINO was furnished a copy of the letter which he received three days thereafter or on April 28, 1995.

Immediately upon receipt of the letter, x x x TOLENTINO wrote the PARO informing the office of his opposition to the planned construction on the ground that it was totally unnecessary as the free-flowing well located at the said property was already a good source of irrigation and that the said permanent improvement might create problems in the future development of the property. x x x TOLENTINO prayed that the PARO disallow the proposed construction by the lessee CASTILLO of the concrete water reservoir and dike.

x x x CASTILLO, on the other (*hand*), went ahead with the construction of the reservoir and the dike.

Consequently, on May 23, 1995, x x x TOLENTINO filed a complaint for dispossession with a prayer for Preliminary Injunction and Temporary Restraining Order (TRO) against x x x CASTILLO before the Office of the Provincial Agrarian Reform Adjudicator, Calapan, Oriental Mindoro.[4]

In his complaint, x x x TOLENTINO averred that x x x CASTILLO's action against (*his*) express wishes and against the order of the PARO constitute nothing less than usurpation of x x x TOLENTINO's property and is an obvious conversion of the 2,000 square meter portion of the landholding for a purpose other than what had been previously agreed upon.

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Moreover, x x x TOLENTINO alleged that x x x CASTILLO owned 10.5084 hectares of agricultural land in Malvar, Naujan, Oriental Mindoro which was covered by TCT No. T-35182, thus, disqualifying lessee CASTILLO from being a beneficiary under the Comprehensive Agrarian Reform Program (CARP).

In his Reply, x x x CASTILLO alleged, as special and affirmative defenses, that (*he*) acted in good faith in the construction of the water reservoir since he firmly believed that such facilities will improve and increase productivity of the land. Lessee CASTILLO asserted that Section 26(1) of R.A. No. 3844 empowered and made it the obligation of the lessee to cultivate and take care of the farm, to grow crops and make other improvements thereon and perform all the necessary works therein in accordance with proven farm practice. Finally, x x x CASTILLO

[4] Docketed as DARAB Case No. IV-ORM-0064-95.

asserted that (*he*) cannot be dispossessed of the landholding except upon authorization by the court and with just cause pursuant to Sec. 31 of R.A. No. 3844, thus, he is entitled to be secure in his tenure.

On June 1, 1995, the Adjudication Board issued a temporary restraining order against x x x CASTILLO ordering him or any other person acting under his authority to desist from continuing with the construction of the water reservoir and dike on the subject landholding.

On January 22, 1999, the Presiding Adjudicator rendered a Decision ordering the ejectment of x x x CASTILLO and directing (*him*) to remove the concrete reservoir and dike.

Upon receipt of the decision, x x x CASTILLO filed on February 25, 1999 a Motion for Reconsideration of the decision and a Supplemental Motion for Reconsideration on March 24, 1999, all of which (*were*) denied. Hence, on September 27, 1999, x x x CASTILLO filed a Notice of Appeal (*to the Department of Agrarian Reform Adjudication Board, or DARAB*).

In a Decision[5] dated February 7, 2001, x x x DARAB dismissed x x x CASTILLO's appeal and declared the January 22, 1999 Decision final and executory.

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Upon Motion for Reconsideration, however, the DARAB reversed its February 7, 2001 decision and issued the assailed Resolution dated August 28, 2002, the dispositive portion of which states:

> "WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Decision of the Adjudicator *a quo* dated 22 January 1999 is hereby SET ASIDE and new one is ENTERED ordering (*TOLENTINO*) to maintain (*CASTILLO*) in his peaceful possession and cultivation of the subject landholding including the 400 square meters home lot assigned to him.
>
> SO ORDERED."

Aggrieved, x x x TOLENTINO filed a Motion for Reconsideration which was denied in an Order dated December 29, 2004 for lack of merit.[6] (Words in italics supplied)

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[5] In DARAB Case No. 9076.

[6] *Rollo*, pp. 36-39.

TOLENTINO filed a petition for review with the Court of Appeals, which rendered the assailed September 28, 2007 Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, petition is hereby GRANTED and the assailed August 28, 2002 Resolution of the Department of Agrarian Reform Adjudication Board is hereby REVERSED and SET ASIDE and a new one entered DECLARING as FINAL and EXECUTORY the January 22, 1999 decision of the Presiding Adjudicator (since notice of appeal having been filed out of time) and ORDERING the ejectment of herein private respondent lessee Pablo Carlo Castillo and directing Pablo Carlo Castillo to remove the concrete reservoir and dike, otherwise, petitioner landlord TOLENTINO may cause the removal of the reservoir and dike and bill private respondent lessee CASTILLO for reasonable expenses of removal.
>
> SO ORDERED.[7]

In holding that CASTILLO's September 27, 1999 notice of appeal was filed out of time, the appellate court found that:

> As records indicate, x x x CASTILLO received a copy of the January 22, 1999 decision of the Provincial Adjudicator on February 12, 1999. Lessee CASTILLO filed a Motion for Reconsideration of the decision on February 25, 1999 or after the lapse of thirteen (13) days from receipt thereof. Lessee CASTILLO's Motion for Reconsideration was denied in a Resolution dated August 26, 1999 which he received on September 23, 1999. From lessee CASTILLO's receipt thereof, lessee CASTILLO has only two (2) days within which to file an appeal or until September 25, 1999 in accordance with the provisions of the Section 11 and paragraph 2 of Section 12 of Rule VIII of the DARAB New Rules of Procedure which provides as follows:
>
> > Section 11. Finality of Judgment. Unless appealed, the decision, order or ruling disposing of the case on the merits shall be final after the lapse of fifteen (15) days from receipt of a copy thereof by counsel or representative on record, or by the party himself who is appearing on his own behalf. In all cases, the parties themselves shall be furnished with a copy of the final decision.

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

x x x x x x x x x

> Section 12, paragraph 2. The filing of a motion for reconsideration shall suspend the running of the period within which the appeal must be perfected. If a motion for reconsideration is denied, the movant shall have the right to perfect the appeal during the remainder of the period for appeal, reckoned from the receipt of the resolution of the denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.
>
> Since private respondent lessee CASTILLO filed the appeal only on September 27, 1999, such appeal was therefore filed not within the reglementary period.[8]

CASTILLO moved for reconsideration but it was denied. Hence, the instant petition raising the following issues:

[A]

WHETHER OR NOT THE FINDING OF THE HONORABLE COURT OF APPEALS DECLARING THAT PETITIONER HAS ONLY UNTIL SEPTEMBER 25, 1999, WHICH HAPPENS TO BE A SATURDAY, WITHIN WHICH TO FILE HIS SUBJECT NOTICE OF APPEAL IS IN ACCORDANCE WITH SECTION 1 OF RULE 22 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE.

[B]

WHETHER OR NOT THE PROVISIONS OF THE 2003 DARAB NEW RULES OF PROCEDURE WHICH NOW AFFORDS AN AGGRIEVED PARTY A PERIOD OF NOT LESS THAN FIVE (5) DAYS AND NOT ONLY THE REMAINING PERIOD WITHIN WHICH TO PERFECT HIS APPEAL IN THE EVENT HIS MOTION FOR RECONSIDERATION IS DENIED, CAN BE GIVEN RETROACTIVE EFFECT TO ACTIONS PENDING AND UNDETERMINED AT THE TIME OF ITS PASSAGE.

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[8] *Id.* at 40.

[C]

WHETHER OR NOT DISMISSING THE CASE ON MERE TECHNICALITY SHOULD BE FAVORED OVER THE MERITS OF THE CASE.

The issues for resolution are: 1) Whether Castillo's appeal before the DARAB was timely filed; and, 2) Whether Castillo's construction of a water reservoir in the subject leasehold is proper.

CASTILLO claims that the Court of Appeals erred in finding that he had only until September 25, 1999, within which to perfect his appeal. He claims that since September 25, 1999 is a Saturday, then the last day to file his appeal falls on September 27, 1999. As such, his appeal was not belatedly filed.

TOLENTINO, on the other hand, argues that per Certification[9] issued by the clerk of the DARAB, CASTILLO received a copy of the Provincial Agrarian Reform Adjudicator's January 22, 1999 decision on February 4, 1999 and he filed his motion for reconsideration only on February 26, 1999, or beyond the fifteen-day period allowed under the 1994 DARAB Rules of Procedure[10] then applicable. As such, CASTILLO's motion

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[9] *Id.* at 145.

[10] Rule VIII, Sections 11 and 12 thereof, provides:

SECTION 11. Finality of Judgment. Unless appealed, the decision, order or ruling disposing of the case on the merits shall be final after the lapse of fifteen (15) days from receipt of a copy thereof by the counsel or representative on record, or by the party himself who is appearing on his own behalf. In all cases, the parties themselves shall be furnished with a copy of the final decision.

SECTION 12. Motion for Reconsideration. Within fifteen (15) days from receipt of notice of the order, resolution or decision of the Board or Adjudicator, a party may file a motion for reconsideration of such order or decision, together with the proof of service of one (1) copy thereof upon the adverse party. Only one (1) motion for reconsideration shall be allowed a party which shall be and based on the ground that: (a) the findings of facts in the said decision, order or resolution are not supported by substantial evidence, or (b) the conclusions stated therein are against the law and jurisprudence.

for reconsideration – and consequently his appeal – should be deemed filed out of time. TOLENTINO argues further that, assuming *ex gratia argumenti* that CASTILLO filed his motion for reconsideration on time (or on February 26, 1999, using as basis the certification issued by the clerk of the DARAB, and not the date established by the Court of Appeals, which is February 25, 1999), he had just one (1) day to perfect his appeal – or up to September 24, 1999 (a Friday) – from September 23, 1999, which is the date he received the Resolution denying his motion for reconsideration.

We sustain CASTILLO in this respect. Indeed, the Court of Appeals erred in failing to take into account that September 25, 1999 was a Saturday. In computing any period of time prescribed or allowed by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included; if the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday, the time shall not run until the next working day.[11]

In this regard, it must be stated that a certain degree of circumspection is required of the lower courts in computing periods, bearing in mind not only to conduct a perfunctory or mechanical counting of days, but more importantly a mindful determination as to what specific days the ends of these periods fall on.

As to the second issue for resolution whether Castillo's construction of a water reservoir in the subject leasehold is proper, CASTILLO argues that there is no written prohibition against

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The filing of a motion for reconsideration shall suspend the running of the period within which the appeal must be perfected. If a motion for reconsideration is denied, the movants shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.

[11] Rules of Court, Rule 22, Sec. 1; *Republic v. Court of Appeals*, G.R. No. 116463, June 10, 2003, 403 SCRA 403; *Herbosa v. Court of Appeals*, G.R. No. 119087, January 25, 2002, 374 SCRA 578.

construction of a water reservoir and dike; that said construction did not result in material conversion of TOLENTINO's landholding; as such the same should be allowed to complement the free-flowing artesian wells already existing on the leasehold.

On the other hand, TOLENTINO insists that CASTILLO's act of unilaterally constructing the reservoir and dike constitutes a valid ground for dispossession under Section 36 of Republic Act No. 3844, as amended by Republic Act No. 6389 (R.A. No. 3844),[12] for the following specific reasons:

1) CASTILLO failed to comply with the provisions of R.A. No. 3844, as amended, in regard to obtaining consent of the agricultural lessor;

2) By constructing the reservoir and dike, CASTILLO used the landholding for a purpose other than what had been previously agreed upon in the lease contract;

3) CASTILLO failed to show that the construction and use of the reservoir and dike constitutes a "proven farm practice";

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[12] "An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds therefor and for Other Purposes." It was amended by Republic Act No. 6389, and its title was changed to "Code of Agrarian Reforms of the Philippines."

Section 36 of the law provides that:

Possession of Landholding; Exceptions. — Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation

4) The reservoir and dike, apart from being expensive to build, are unnecessary and did not increase the yield of his rice land;

5) There is already an existing irrigation system in the form of two free-flowing artesian wells;

6) The construction violates the leasehold agreement which provides that "the free-flow artesian wells shall stay and be part of and shall service the landholding of 2.8 hectares";[13]

7) CASTILLO's ownership of a ten-hectare farm land disqualifies him as tenant on TOLENTINO's land;

8) CASTILLO had been previously convicted by final judgment of the crime of less serious physical injuries by the Regional Trial Court of Calapan, Oriental Mindoro, Branch 40 in Criminal Case No. C-2933 entitled "*People v. Pablo Carlo*

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equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due; *Provided*, That if the nonpayment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the nonpayment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sublessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

[13] *Rollo*, pp. 126 and 164.

Castillo" for his attempt upon the life of TOLENTINO's son, George C. Tolentino; and,

9) CASTILLO's construction of the reservoir and dike despite being ordered by the PARO to discontinue constitutes usurpation and illegal conversion of the landholding for a purpose other than what had been agreed upon.

The petition lacks merit.

Section 32 of R.A. No. 3844[14] specifically requires notice to and consent of the agricultural lessor before the agricultural lessee may embark upon the construction of a permanent irrigation

[14] **Section 32.** Cost of Irrigation System. —The cost of construction of a permanent irrigation system, including distributory canals, may be borne exclusively by the agricultural lessor who shall be entitled to an increase in rental proportionate to the resultant increase in production: *Provided*, That if the agricultural lessor refuses to bear the expenses of construction the agricultural lessee or lessees may shoulder the same, in which case the former shall not be entitled to an increase in rental and shall, upon the termination of the relationship, pay the lessee or his heir the reasonable value of the improvement at the time of the termination: *Provided, further*, That if the irrigation system constructed does not work, it shall not be considered as an improvement within the meaning of this Section; *Provided, furthermore*, That the lessees, either as individuals or as groups, shall undertake the management and control of irrigation systems within their respective jurisdiction. However, those constructed and operated by the government may be given to the lessees either as individuals or as groups at their option with the right to maintain, manage and operate such irrigation systems and to collect and receive rentals therefrom; *Provided, still further*, that the lessees, either as individuals or as groups, shall allocate not more than twenty-five percent of their collection for rentals to the government if the irrigation system has obligations to meet until paid, otherwise such irrigation system will be maintained, managed and operated solely by the lessees either as individuals or as groups, subject to such rules on water rights and water use promulgated by the National Irrigation Administration or such other government agencies authorized by law: *Provided, finally*, That if the irrigation system is installed and/or constructed at the expense of the landowner or agricultural lessor, the Department of Agrarian Reform shall initiate, while the Land Bank shall finance, the acquisition of such irrigation system at its current fair market value so that the ownership thereof may be vested in the lessees as individuals or groups.

system. It is only when the former refuses to bear the expenses of construction that the latter may choose to shoulder the same. More importantly, any change in the use of tillable land in the leasehold, *e.g.* through the construction of a sizeable water reservoir, impacts upon the agricultural lessor's share in the harvest, which is the only consideration he receives under the agrarian law. This being the case, before the agricultural lessee may use the leasehold for a purpose other than what had been agreed upon, the consent of the agricultural lessor must be obtained, lest he be dispossessed of his leasehold.[15]

In the instant case, records show that on April 25, 1995, CASTILLO wrote the PARO, informing it of his intention to construct the reservoir and dike.[16] TOLENTINO was not an addressee of the letter; he was merely furnished with a copy thereof. On April 28, 1995, TOLENTINO registered his objection to CASTILLO's plan, through a letter sent to the PARO.

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[15] See footnote 12.

[16]

Sta. Isabel, Calapan
Or. Mindoro
April 25, 1995

Provincial Agrarian Reform Office
DEPARTMENT OF AGRARIAN REFORM
NIA Compound, Bayanan II
Calapan, Or. Mindoro

Mga Ginoo:

Sa pamamagitan po nito ay gusto kong paratingin sa inyo, bilang ahensya ng pamahalaang nangangasiwa sa pagbabagong pansakahan ang aking planong magtayo ng imbakan ng tubig sa aking sinasakang lupa na pag-aari ni Dr. Manuel Tolentino at matatagpuan dito sa Sta. Isabel, Calapan, Or. Mindoro.

Ang tubig pong iimbakin sa binabalak na gawing imbakan ay manggagaling sa aking poso artesyano (free flowing artesian well). Ang imbakan po na bnabalak kong simulang gawin bago matapos ang buwang ito (Abril) ay magkakaroon ng kabuuang luwang na 2,000 metro kuwadrado at ang dike na yari sa semento ay isang metro ang taas.

CASTILLO, in the meantime and without awaiting the landowner's reply nor consulting with the latter, began construction of the reservoir. The PARO, in a reply-letter,[17] advised CASTILLO to desist; by then, construction of the reservoir was already 75% complete.[18]

Moreover, CASTILLO's proposed reservoir involved the conversion of a considerable area (2,000 square meters) of the landholding which certainly affects TOLENTINO's share in the harvest. Although the actual area involved (for the reservoir) was reduced from 2,000 square meters to only 750 square meters, still CASTILLO's letter was clear as to the fact that he was going to construct on 2,000 square meters. This being so, TOLENTINO had every right to be informed of the proposed project and his consent to the construction thereof was necessary before CASTILLO may validly embark upon the same in case the former refused, because the tillable area of the leasehold would be reduced significantly and his corresponding share in the harvest could be reduced as well.

The record also shows that there is an existing irrigation system in the form of two free-flowing artesian wells, which supply water to the leasehold. The necessity of constructing CASTILLO's proposed reservoir was thus placed in question,

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Inaasahan ko pong sa pamamagitan ng imbakang ito ay malulutas na ang palagiang suliranin ko sa patubig sa aking palayan na nagbibigay ng aning lubhang mababa kaysa dapat asahan at paminsan-minsang pagkalugi.

Lubos na gumagalang,
(Signed)
P'CARLO A. CASTILLO
Nangungupahang Magsasaka

Pinadalhan ng Sipi:
Dr. Manuel Tolentino
Elbo St., San Vicente West
Calapan, Or. Mindoro

[17] *Rollo*, pp. 52-53.
[18] *Id.* at 60.

owing to its apparent superfluity. It has not been shown that, prior to its construction, CASTILLO discussed with TOLENTINO the necessity of erecting a reservoir. Naturally, where there is an existing irrigation system that supplies needed water to the leasehold, the construction of another that requires a substantial area of land that should otherwise be used to plant rice is superfluous and unnecessary.[19] The law (Sec. 32 of R.A. No. 3844) does not give blanket authority to the agricultural lessee to construct an irrigation system at anytime and for any reason; instead, it presupposes primarily that the same is necessary.

The existence of the free-flowing artesian wells debunks the necessity of building an expensive reservoir that takes away a sizeable area of tilled land. Besides, there are other irrigation systems cheaper to construct and which require less space than a water reservoir. CASTILLO could have dug another artesian well anywhere within the leasehold; it certainly would have cost just a fraction of what he spent for in the construction of the concrete reservoir. Besides, the necessity of a *ground* storage reservoir that would hold water from an *underground* source is not exactly an efficient way of dispensing irrigation water, if not a completely redundant one; the underground source of water – the aquifer – is *itself* a water reservoir. One does not need to take water from an underground reservoir and store it in a ground reservoir; it is impractical, as the water will only be subjected to evaporation and seepage, which defeats the very purpose of the reservoir, which is to store water efficiently. Underground water reservoirs are by themselves efficient, because water stored in them are not at risk of evaporation and seepage; not to mention that they could supply an *unlimited* amount of irrigation water to the farmer so long as the hydrologic cycle[20] remains uninterrupted and the underground aquifer does

[19] Photographs of the reservoir will show that the same was built right in the middle of the ricefield. *Rollo*, pp. 192-194.

[20] The hydrologic cycle is a constant movement of water above, on, and below the earth's surface. It is a cycle that replenishes ground water supplies. It begins as water vaporizes into the atmosphere from vegetation,

not run dry. Ground storage reservoirs are mainly for areas where there is very little or no underground water source; in such case, water from the rains and from rivers or creeks are caught and trapped in them for future use, although the water stored therein runs the risk of evaporating into the atmosphere and seeping into the ground.

Since the underground aquifer is itself a water reservoir accessible through a portable water pump, then there is no need to construct a ground storage reservoir that only eats up precious land otherwise used for planting rice. In other words, ***as it is***, with the underground aquifer ***below*** which serves as the reservoir of precious water, and the area ***above*** it devoted **wholly** to planting rice, operation of the leasehold is already at its optimal level; no part or area thereof is put to unnecessary waste, unlike what CASTILLO proposes via his superfluous ground storage reservoir.

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soil, lakes, rivers, snowfields and oceans – a process called evapotranspiration.

As the water vapor rises it condenses to form clouds that return water to the land through precipitation: rain, snow, or hail. Precipitation falls on the earth and either percolates into the soil or flows across the ground. Usually it does both. When precipitation percolates into the soil it is called infiltration; when it flows across the ground it is called surface runoff. The amount of precipitation that infiltrates, versus the amount that flows across the surface, varies depending on factors such as the amount of water already in the soil, soil composition, vegetation cover and degree of slope.

Surface runoff eventually reaches a stream or other surface water body where it is again evaporated into the atmosphere. Infiltration, however, moves under the force of gravity through the soil. If soils are dry, water is absorbed by the soil until it is thoroughly wetted. Then excess infiltration begins to move slowly downward to the water table. Once it reaches the water table, it is called ground water. Ground water continues to move downward and laterally through the subsurface. Eventually it discharges through hillside springs or seeps into streams, lakes, and the ocean where it is again evaporated to perpetuate the cycle. (BASIC GROUND WATER HYDROLOGY, http://www.issaquah.org/comorg/gwac/Hydro.htm. This overview of the science necessary to understand groundwater issues is taken from Chapter 2 of the Washington State, Department of Ecology, Ground Water Resource Protection Handbook, Published December 1986)

It appears that CASTILLO consciously made a unilateral decision to build the reservoir to the exclusion of his agricultural lessor, who happens to be the owner, as well, of the property which he, as mere agricultural lessee, tills. This does not speak well of him, considering that he is just a steward of TOLENTINO's land. While R.A. No. 3844 favors – to a very large extent, indeed – agricultural lessees and farmworkers, they should appreciate and accept their position with gratitude and humility at the very least. Having benefited greatly from decades of tilling the land, CASTILLO owes much to TOLENTINO, and the least he could do is to treat the latter with respect and proper regard for his position as the owner of the leasehold.

CASTILLO has been convicted by final judgment of the crime of less serious physical injuries committed against TOLENTINO's son, George,[21] which constitutes evidence of CASTILLO's presumptuousness and lack of respect for his lessor. His actions alone in regard to the construction of the reservoir speaks much of how he has conducted himself with TOLENTINO, and how he regards the owner of the land which he tills. Indeed, he does not hide his animosity and disdain for the landowner. It is not difficult to arrive at the conclusion that CASTILLO deliberately intended to exhibit this contempt by specifically *addressing* his April 25, 1995 letter to the PARO alone, while merely *furnishing* TOLENTINO with a copy thereof, instead of the other way around, or at least making both parties addressees to the letter. It is thus not difficult to imagine that CASTILLO purposely embarked upon the irrigation project without obtaining TOLENTINO's consent on account of his presumptuousness.

An examination of the record reveals that the foregoing observation is shared as well by the Provincial Adjudicator who decided the case in the first instance, thus:

> But the crucial issue at bar is not whether or not the challenged water reservoir will increase the productivity of the land in question, rather whether or not defendant (CASTILLO) can unilaterally construct

[21] *Rollo*, p. 64.

the same even against the will of and timely objection of the landowner. To the mind of this Board, a tenant cannot unilaterally construct such kind of permanent structure without the consent, much more against the timely objection of the landowner.

The foregoing circumstances considered, it is very clear that defendant violated the trust and confidence of plaintiff (TOLENTINO) by proceeding with the said construction, an act too presumptuous and overbearing to say the least, bordering on defiance and abuse of tenancy rights by hiding under the protective cloak of the agrarian reform law, which this Board cannot condone.[22]

Agrarian laws were enacted to help small farmers uplift their economic status by providing them with a modest standard of living sufficient to meet their needs for food, clothing, shelter and other basic necessities.[23] It provides the answer to the urgent need to alleviate the lives of the vast number of poor farmers in our country. Yet, despite such laws, the majority of these farmers still live on a hand-to-mouth existence. This can be attributed to the fact that these agrarian laws have never really been effectively implemented. Certain individuals have continued to prey on the disadvantaged, and as a result, the farmers who are intended to be protected and uplifted by the said laws find themselves back in their previous plight or even in a more distressing situation.[24]

R.A. No. 3844, or the Agricultural Land Reform Code, was enacted by Congress to institute land reforms in the Philippines. It was passed to establish owner-cultivatorship and the family size farm as the basis of Philippine agriculture; to achieve a dignified existence for the small farmers free from pernicious industrial restraints and practices; as well as to make the small

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[22] *Rollo*, p. 64.

[23] *Bautista v. Mag-isa*, G.R. No. 152564, September 13, 2004, 438 SCRA 259.

[24] *Gonzales v. Court of Appeals*, G.R. No. 110335, June 18, 2001, 358 SCRA 598.

farmers more independent, self-reliant and responsible citizens and a source of genuine strength in our democratic society.[25]

Yet, while the foregoing holds true, agrarian laws were established in light of the social justice precept of the Constitution and in the exercise of the police power of the state to promote the *common* weal.[26] While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute would automatically be decided in favor of labor.[27] The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege.[28] R.A. 3844 and R.A. 6389, being social legislations, are designed to promote economic and social stability and must be interpreted liberally to give full force and effect to their clear intent, not only in favor of the tenant-farmers but also of landowners.[29]

While our agrarian laws give much leeway – by way of rights, benefits and privileges – to the landless and those who merely till lands belonging to others, lack of deference, disrespect, ingratitude, an unbecoming behavior toward the lessors and landowners, as well as a blatant abuse of their rights, are never free adjuncts. These cannot find favor with the Court.

The fact that CASTILLO was convicted by final judgment of an offense against TOLENTINO's son, George, demonstrates how relations between the two have deteriorated. While R.A.

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[25] *De Jesus v. Intermediate Appellate Court*, G.R. No. 72282, July 24, 1989, 175 SCRA 559.

[26] *Salen v. Dinglasan*, G.R. No. 59082, June 28, 1991, 198 SCRA 623.

[27] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302.

[28] *Cecilleville Realty and Service Corp. v. Court of Appeals*, G.R. No. 120363, September 5, 1997, 278 SCRA 819.

[29] *Santiago v. Court of Appeals*, G.R. No. 48518, November 8, 1989, 179 SCRA 188.

No. 3844 authorizes termination by the agricultural lessee of the lease for a crime committed by the agricultural lessor against the former or any member of his immediate farm household,[30] the same privilege is not granted to the agricultural lessor. Yet, this does not mean that the courts should not take into account the circumstance that the agricultural lessee committed a crime against the agricultural lessor or any member of his immediate family. By committing a crime against TOLENTINO's son, CASTILLO violated his obligation to his lessor to act with justice, give everyone his due, and observe honesty and good faith,[31] an obligation that is deemed included in his leasehold agreement. Provisions of existing laws form part of and are read into every contract without need for the parties expressly making reference to them.[32]

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[30] **Section 28.** *Termination of Leasehold by Agricultural Lessee During Agricultural Year*. —The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:

(1) Cruel, inhuman or offensive, treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;

(2) Non-compliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of this Code or by his contact with the agricultural lessee;

(3) Compulsion of the agricultural lessee or any member of his immediate farm household by the agricultural lessor to do any work or render any service not in any way connected with farm work or even without compulsion if no compensation is paid;

(4) Commission of a crime by the agricultural lessor or his representative against the agricultural lessee or any member of his immediate farm household; or

(5) Voluntary surrender due to circumstances more advantageous to him and his family.

[31] Civil Code, Article 19.

[32] *Republic v. Rosemoor Mining and Development Corp.,* G.R. No. 149927, March 30, 2004, 426 SCRA 517.

With respect to TOLENTINO's claim that CASTILLO owns a ten-hectare agricultural land, it appears from the evidence[33] that the latter has sold the same entirely, without availing of the retention limits allowed by law.[34] CASTILLO declares openly that he has no more property, other than the homelot on the subject leasehold. Thus, while TOLENTINO is being deprived of full enjoyment of his land owing to the existence of the leasehold tenancy in CASTILLO's favor, the latter has been selling his own left and right, until nothing remains of it, not even the authorized retention area. An examination of the cancelled TCT No. T-35182 in CASTILLO's name reveals that in 1988, 20,000 square meters of the ten-hectare property were sold to spouses Tranquilino and Maria Garbin and Maria Hernandez; thereafter, another 20,000 square meters were **donated** to Primitivo, Enrique and Evangeline, all surnamed Echanova, and to Roy, Rosanna, Ritarose, Sheila and Reagan, all surnamed Castillo; in 1989, a deed of voluntary transfer in favor of Victoria Castillo was executed with respect to 15,087 square meters; in 1989, another deed of voluntary transfer in favor of Felicidad Regala of 25,000 square meters was executed. At present, CASTILLO claims that nothing is left of the property as he was constrained to dispose of it due to financial difficulties.[35]

We are here confronted with a situation where an agricultural lessee insists on his right to maintain himself in the leasehold, yet has sold – even **donated** – his own land which he could have very well maintained and from which he could have generated livelihood for himself and his family *alone*, thus freeing himself from the bondage and hardship of having to till someone else's land and pay rent to the owner of the land. CASTILLO supplicates upon this Court to favor him, alleging that he has no other means

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[33] Transfer Certificate of Title (TCT) No. T-35182, consisting of 10.5 hectares, in the name of CASTILLO. It appears that title was placed in CASTILLO's name in 1986. It has since been cancelled.

[34] Republic Act No. 6657.

[35] *Rollo*, p. 179.

of livelihood; yet the evidence is glaring that he once had his own land – which is even larger in area than his leasehold – but opted to sell and donate it all, leaving nothing for himself and his family, in complete defeat of the agrarian laws' aim to provide land to the landless. In other words, while CASTILLO had finally achieved the ultimate goal of having his own land, **he chose to return to the very pitiful situation that our agrarian laws precisely seek to eradicate**.

The law recognizes and condones that a leasehold tenant may have his own land while he tills that of another,[36] but certainly we cannot see any justification why a tenant should give away for free and sell his own agricultural land until nothing is left, and then insist himself on someone else's – without giving the landowner the proper respect and regard that is due him, acting presumptuously and beyond his stature as mere agricultural lessee.

We do not believe that CASTILLO is the needy and pitiful tenant that he paints himself to be. He was the owner of a large tract of agricultural land, and he was very well able to embark upon a relatively costly irrigation project without availing of the benefits given him under Section 32[37] of R.A. No. 3844 – that is, instead of TOLENTINO footing the cost of the irrigation system, he chose to undertake construction at his own expense. An examination of the photographs[38] of the irrigation project shows that the whole 750-square meter area of the reservoir was fenced off with concrete hollow blocks to more than a meter high, with a thick and sturdy concrete foundation and adequately reinforced cement posts, as well as solid outer concrete supports, and finished off with a smooth coating of cement on the inside to prevent seepage. This certainly

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[36] R.A. No. 3844, Section 27.

[37] See footnote 14.

[38] Attached to CASTILLO's Reply to TOLENTINO's Comment, at pp. 192-194 of the *rollo*.

entailed considerable expense,[39] more than the average farmer could accommodate on his own.

We cannot allow a situation where – despite the one-sided nature of the law governing agricultural leasehold tenancy (R.A. No. 3844), which exceedingly favors the agricultural lessee/ tenant and farmworker – the agricultural lessee has shown lack of courtesy to the landowner and, instead, abused his rights under said law, at the same time neglecting or willfully refusing to take advantage of his rights under the comprehensive agrarian reform law which would have otherwise fulfilled its mandate to provide land for the landless. The *primary purpose*, precisely, of agrarian reform is the redistribution of lands to farmers and regular farmworkers who are *landless*, irrespective of tenurial arrangement.[40] Yet by the manner CASTILLO conducted himself, he has gone completely against the very essence of agrarian reform. Instead of ending up as a farmer with his own land to till, he deliberately chose to dispose of the same and remain a mere agricultural tenant.

As we have stated earlier, while our agrarian reform laws significantly favor tenants, farmworkers and other beneficiaries, we cannot allow pernicious practices that result in the oppression of ordinary landowners as to deprive them of their land, especially when these practices are committed by the very beneficiaries of these laws. Social justice was not meant to perpetrate an injustice against the landowner.[41]

An appreciation of the circumstances of the case brings us to the conclusion that CASTILLO has gone against the very grain and purpose of our agrarian laws.

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[39] CASTILLO claims the project cost him ₱61,000.00. This amount does not as yet include provisions for the concrete flooring of the whole reservoir. *Rollo*, pp. 195-205.

[40] Republic Act No. 6657 (Comprehensive Agrarian Reform Law), Section 3.

[41] *Danan v. Court of Appeals*, G.R. No. 132759, October 25, 2005, 475 SCRA 113.

The social justice program of the government to ensure the dignity, welfare and security of all the people (New Constitution, Art. I, Sec. 6) by improving the economic condition of the poor and providing land for the landless would be an idle and meaningless policy were we to allow the privileged and the rich to grow richer and the landed gentry to amass more land holdings at the expense of the less fortunate and the less privileged. A fairer and more equitable distribution of the country's land resources to a greater number of tillers of the soil as farmer-owners and not as mere agricultural tenants will go a long way in effectively achieving the agrarian or land reform program in our country today.[42]

R.A. No. 3844 does not operate to take away completely every landowner's rights to his land. Nor does it authorize the agricultural lessee to act in an abusive or excessive manner in derogation of the landowner's rights. After all, he is just an agricultural lessee. Although the agrarian laws afford the opportunity for the landless to break away from the vicious cycle of having to perpetually rely on the kindness of others,[43] a becoming modesty demands that this kindness should at least be reciprocated, in whatever small way, by those benefited by them.

In sum, we hold that the construction of the reservoir constitutes a violation of Section 36 of R.A. No. 3844,[44] an unauthorized use of the landholding for a purpose other than what had been agreed upon, and a violation of the leasehold contract between CASTILLO and TOLENTINO, for which the former is hereby penalized with permanent dispossession of his leasehold.

WHEREFORE, the Petition for Review on *Certiorari* is *DENIED*. The assailed September 28, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 88738, with respect to

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[42] *Republic v. Heirs of Caballero*, G.R. No. L-27473, September 30, 1977, 79 SCRA 177.

[43] *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform*, G.R. No. 140847, September 23, 2005, 470 SCRA 609.

[44] See footnote 12.

the portion thereof which orders the ejectment of petitioner P'Carlo A. Castillo, as well as the removal of the concrete reservoir and dike, as well as the January 23, 2008 Resolution denying the motion for reconsideration, are *AFFIRMED*.

Petitioner is hereby *PERMANENTLY DISPOSSESSED* of the subject leasehold and ordered to *VACATE* and *SURRENDER* the same immediately to respondent Manuel Tolentino. The leasehold agreement between the parties is hereby deemed *TERMINATED* and the tenancy relationship between the parties *ENDED*.

With respect to standing crops thereon, however, they shall be harvested and shared one final time in accordance with what has been stipulated in the terminated leasehold agreement.

Furnish a copy of this Decision to the Provincial Agrarian Reform Office (PARO) at Calapan, Oriental Mindoro, in order that it may be notified and that it may act in accordance with procedure involving proceedings of this nature.

Costs against petitioner.

SO ORDERED.

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

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[*] In lieu of Associate Justice Ma. Alicia Austria-Martinez, per Special Order No. 568 dated February 12, 2009.

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